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March 3d 1880

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 904½.

State of Missouri ex rel

FRANK J. BOWMAN, PLAINTIFF IN ERROR,

vs.

EDWARD A. LEWIS ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI

FILED OCTOBER 8, 1879.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Supreme Court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Missouri, between the State of Missouri ex rel. Frank J. Bowman, relator, and Edward A. Lewis, Charles S. Hayden, and Robert A. Bakewell, respondents, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the State of Missouri ex rel. Frank J. Bowman, relator, against Edward A. Lewis, Charles S. Hayden, and Robert A. Bakewell, judges of the St. Louis Court of Appeals, respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Frank J. Bowman, relator, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this tenth day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued at office in the city of St. Louis, with the seal of the Circuit Court of the United States for the Eastern District of Missouri, dated as aforesaid.

[SEAL.]

M. M. PRICE,
Clerk of said Circuit Court.

Allowed by—

T. A. SHERWOOD, *C. J. S. C. Mo.*

2 STATE OF MISSOURI, *ss:*

I, Henry W. Ewing, clerk of the Supreme Court of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, at Washington, a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court at office, in the city of Jefferson, this 3d day of October, A. D. 1879.

[SEAL.] HENRY W. EWING, *Clerk.*

(Endorsed:) State ex rel. F. J. Bowman, rel., vs. E. A. Lewis et al., resp. Writ of error. Filed July 1st, 1879. H. W. Ewing, clerk, by Chas. G. Guenther, D. C.

3 THE UNITED STATES OF AMERICA,

To Edward A. Lewis, Charles S. Hayden, and Robert A. Bakewell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the State of Missouri, wherein Frank J. Bowman is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable T. A. Sherwood, Chief Justice of the Supreme Court of the State of Missouri, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

T. A. SHERWOOD,
Chief Justice of the Supreme Court of the State of Missouri.

4 UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF MISSOURI. } *ss.*

I have executed this writ by delivering a copy thereof to each of the within-named Edward A. Lewis and Charles S. Hayden, and by leaving a copy thereof at the place of abode of the within-named Robert A. Bakewell with a member of his family over the age of sixteen years (his wife), all at St. Louis, in said district, on the 17th day of June, A. D. 1879.

H. W. LEFFINGWELL,
U. S. Marshal, E. D. Mo.,
By JAMES B. GEGGIE,
Deputy.

3 services.....	6 00
Expense.....	1 00
	7 00

(Endorsed:) Frank J. Bowman vs. Edward A. Lewis, Chas. S. Hayden, and Robert A. Bakewell. Citation. Filed July 1st, 1879. H. W. Ewing, clerk, by Chas. G. Guenther, D. C.

5 STATE OF MISSOURI, *set.*

Be it remembered that heretofore, to wit, at the April term, 1879, of the Supreme Court of the State of Missouri, and on April the 16th, 1879, the following among other proceedings were had in the said court:

STATE EX REL. FRANK J. BOWMAN, REL.,
vs.
EDWARD A. LEWIS ET AL., JUDGES OF THE St. Louis Court of Appeals, Resp. } Mandamus.

Now at this day comes the said relator, Frank J. Bowman, in his proper person, and presents to the court an application for an alternative writ of mandamus to the said respondents, judges of the Saint Louis Court of Appeals.

Which said application is in words and figures as follows:

Application for Mandamus.

In the Supreme Court of the State of Missouri. April term, 1879.

THE STATE OF MISSOURI AT THE RELATION OF
Frank J. Bowman
vs.
6 EDWARD A. LEWIS, CHAS S. HAYDEN, and Robt. A. Bakewell, judges of the St. Louis Court of Appeals.

Now comes Frank J. Bowman and respectfully represents and shows that heretofore, on the fifth day of March, A. D. 1879, he was defendant and appellant in a cause then pending before the St. Louis Court of Appeals, on appeal from the Circuit Court of the City of St. Louis, entitled "In the matter of Frank J. Bowman, Attorney and Counsellor at Law," wherein, without due process of law, at the private suit of Alexander Martin et al., a committee of prosecution of the Bar Association of St. Louis, it was wrongfully and unlawfully attempted to deprive your petitioner of the right and privileges theretofore enjoyed by him of practicing his profession as attorney at law, in this and all other courts of record of this state; that on the day last mentioned the said St. Louis Court of Appeals rendered a final decision and erroneous judgment in said cause, adverse to your petitioner and in affirmance of the illegal and erroneous judgment of the Circuit Court of the City of St. Louis theretofore rendered without due process of law, the same
7 being a judgment of removal from practice in this and all other courts of record in this, without sufficient cause shown therefor, all which will more fully and particularly appear by a true

and certified copy of the record of all the proceedings had in said cause, which is herewith presented and made part of this petition, that this honorable court may be more fully advised of and concerning the same.

[Mem: The certified copy of the record and proceedings here referred to is transmitted herewith, marked Exhibit "A."]

Your petitioner further states and shows that from the erroneous judgment of the said St. Louis Court of Appeals in said cause he was and is legally and rightfully entitled to an appeal to this honorable court for a full review and correction of all errors appearing upon the record in said cause, as will fully appear by an inspection of the true and certified copy of said record herewith presented and produced.—(See Exhibit "A.")

8 And your petitioner further states and shows that being so entitled as aforesaid to his right of appeal from said erroneous judgment of the St. Louis Court of Appeals, your petitioner, on the tenth day of March, A. D. 1879, prayed his appeal from the said St. Louis Court of Appeals in due form, and presented his affidavits for appeal in words as follows:

In the St. Louis Court of Appeals.

IN THE MATTER OF CHARGES AGAINST Frank J. Bowman, Appellant, at the relation of Alexander Martin et al., Respondents.	Before St. Louis Court of Appeals. March term, 1879. Affidavit for appeal.

STATE OF MISSOURI, *ss.*

Frank J. Bowman, the appellant, being duly sworn, makes oath and says, that the appeal prayed for in the above-entitled cause, is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court; and that to the affiant and appellant the value of the franchises or privileges involved in this cause, the forfeiture of which has been decreed herein, exceeds the sum of ten thousand dollars.

FRANK J. BOWMAN.

9 Sworn to and subscribed before me, this 10th day of March, A. D. 1879.

J. THORNBURGH, *Ck.*

IN THE MATTER OF THE CHARGES AGAINST Frank J. Bowman, Appellant, at the relation of Alexander Martin et al., Respondents.	In the St. Louis Court of Appeals.

And now by his counsel undersigned comes Frank J. Bowman, and prays the court to grant him an appeal from the judgment rendered herein to the Supreme Court of the State of Missouri, on the grounds following, viz:

I. There are errors to his prejudice in said judgment.

II. He is entitled to an appeal from said judgment in order that said errors may be corrected.

III. This case involves the right of this appellant to an office, privilege, or franchise, exceeding in value the sum of twenty-five hundred dollars, exclusive of costs, the same being here in dispute.

10 IV. In this case the appellant's title to an office under the State of Missouri is involved, to wit, the office of an attorney at law.

V. The appellant is a party to this suit, and he is a state officer.

VI. In this case there is involved the construction of the 30th section of article 2nd of the constitution of the State of Missouri, which provides that "no person shall be deprived of life, liberty, or property without due process of law."

VII. This case involves the construction of section 30, article 6 of the constitution of the State of Missouri, which provides that "all writs and process shall run, and all prosecutions shall be conducted in the name of the State of Missouri."

VIII. This case involves the construction of section 22 of art. 2, constitution of the State of Missouri, which provides that in criminal prosecution the accused shall have the right to meet the witnesses against him face to face.

11 IX. This case involves the construction of the 22nd sect. of art. 6 of the constitution of the State of Missouri, *which* provides that the circuit court *shall have jurisdiction* over all criminal cases not otherwise provided for by law.

X.—The appellant is a member of the bar of the Supreme Court of the State of Missouri and an officer of said court, as appears from Exhibit A, hereto attached, and said court has the right or authority to review the proceedings herein, inasmuch as the judgment herein in effect attempts to deprive him of rights and privileges to which he is entitled as an officer of said Supreme Court of the State of Missouri.

HIRAM J. GROVER,
Appellant's Attorney.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

12 Frank J. Bowman, the appellant in the foregoing-entitled cause, being duly sworn, on oath states that the facts and matters and things stated in the foregoing application are true, to the best of his knowledge and belief.

FRANK J. BOWMAN.

Subscribed and sworn to before me, this tenth day of March, A. D. 1879.

J. THORNBURGH, *Ck.*

[SEAL CT. APPEALS.]

To which affidavit was attached a certificate of the clerk of this honorable court showing that your petitioner was a practicing attorney of this honorable court.

And at the time of the praying of said appeal, and presentment of said affidavits, your petitioner presented his bond, in such form and in such manner as by law required, with good and sufficient sureties thereon, viz., Geo. Knapp, John G. Priest, and Chas.
13 Greene; and your petitioner did further urge his right of appeal before said court, and show good cause therefor by presentment of a brief in support of his application for said appeal for the consideration of said court, as will more fully appear by a true copy of the same herewith presented and shown to this honorable court. [The copy of the brief here referred to is transmitted herewith, marked Exhibit "B."]

And your petitioner further states and shows that the said St. Louis Court of Appeals, and the three judges thereof named defendants herein, wholly disregarding their duty in the premises, wrongfully and illegally neglected and refused, and still neglect and refuse, to grant the appeal so prayed for by your petitioner as aforesaid, from its erroneous judgment so rendered as aforesaid in said cause, as will more fully appear by the true and certified copy of the record filed herewith.

Your petitioner further shows and says that by attorneys
14 learned in the law he is advised and believes that unless this honorable court issue its writ of mandamus requiring, directing, and commanding the said St. Louis Court of Appeals to grant the appeal as prayed for by your petitioner as aforesaid, he has no adequate remedy in law or equity, and will suffer great and irreparable loss and injury.

Wherefore your petitioner prays that this honorable court will order and direct to be issued its alternative writ of mandamus to the St. Louis Court of Appeals, and each of the judges thereof, directing, requiring, and commanding that, "in the matter of Frank J. Bowman, attorney and counsellor at law," the appeal to this honorable court, as prayed for, be forthwith granted, or cause shown to this honorable court why said appeal should not be allowed.

And your petitioner prays for the making of such further
15 orders as in the judgment of this honorable court may be necessary, meet, and proper to be made for the full protection of the rights of your petitioner in the premises.

FRANK J. BOWMAN.

Subscribed and sworn to before me, this 16th day of April, 1879.

H. W. EWING, *Clk. Sup. Ct.*,
By CHAS. G. GUENTHER, *D. C.*

16 And afterwards, to wit, at the said April term, 1879, of said court, and on May 26, 1879, the following further proceedings were had in said cause:

STATE EX REL. FRANK J. BOWMAN, RELATOR,
vs.
EDWARD A. LEWIS, CHAS. S. HAYDEN, AND RQBT. A. BAKEWELL, JUDGES OF THE ST. LOUIS COURT OF APPEALS, RESPONDENTS. } Mandamus.

Now at this day come the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the application for an alternative writ of mandamus heretofore filed herein, to the said respondents, the judges of the Saint Louis Court of Appeals, be and the same is hereby refused.

And afterwards, to wit, at the said April term of said
17 court, and on June 2d, 1879, the following further proceedings were had in said cause:

STATE EX REL. FRANK J. BOWMAN, RELATOR,
vs.
EDWARD A. LEWIS ET AL., JUDGES ST. LOUIS COURT OF APPEALS, RESP. } Mandamus.

Now at this day comes the said relator, in his proper person, and files herein his motion for a rehearing of this cause.

Which said motion is in words and figures following:

In the Supreme Court of Missouri. April term, 1879.

FRANK J. BOWMAN, PLFF.,
vs.
E. A. LEWIS ET AL., DEFT. } Motion for a rehearing of application of writ of mandamus.

Now comes Frank J. Bowman and moves for a rehearing in the above-entitled cause, and respectfully directs the attention
18 of the court to the act of the legislature of the State of Missouri concerning appeals, as approved February 16, 1877, wherein it is provided that "every person aggrieved by any final judgment or decision of any circuit court or the St. Louis Court of Appeals, may make his appeal to the supreme court *in any civil case*."

See Meyer's Supplement to Wagner's Statutes, p. 306, § 9.

And if, in the opinion of this court it should be considered that the above provision is repugnant to or inconsistent with the provisions of sect. 12, art. 6, of the constitution of the State of Missouri, and that by reason of the same the writ should be denied, it is by applicant insisted that such limitation, if created by the state constitution, is in violation of the fourteenth amendment of the Constitution of the United States, and other provisions of the Constitution of the United States guaranteeing equality to all citizens in their rights, privileges, and obligations.

19 And applicant asks and moves the court to deliver in said cause a written opinion, that it may fully appear whether

there is or is not therein involved such questions and issues as entitle the applicant, if his writ is by this honorable court refused, to present such constitutional questions as are involved herein before the Supreme Court of the United States, if deemed advisable, meet, and proper so to do. Respectfully submitted,

FRANK J. BOWMAN, *pro se.*

20 And afterwards, to wit, at the April term, 1879, aforesaid, and on the 2d day of June, 1879, the following further proceedings were had in said cause, to wit:

STATE EX REL. FRANK J. BOWMAN, REL.,
vs.
EDWARD A. LEWIS ET AL., RESP. } Mandamus.

Now, at this day, opinion on application for alternative writ of mandamus filed.

Which said opinion is in words and figures as follows:

In re Frank J. Bowman, application for alternative writ of mandamus to the St. Louis Court of Appeals.

Per curiam.

The alternative writ is denied, because we regard the case as one in which no appeal lies from the St. Louis Court of Appeals to this court, the St. Louis Court of Appeals being the court of last resort.

21 We are of the opinion that no provision of our state constitution, with respect to appeals and writs of error from the St. Louis Court of Appeals to this court, conflicts with the 14th amendment to the Constitution of the United States, or any other provision of that instrument.

And afterwards, in vacation of said court, and on Tuesday, the first day of July, 1879, the following further proceedings were had in said cause:

STATE EX REL. FRANK J. BOWMAN, REL.,
vs.
EDWARD A. LEWIS ET AL., RESP. } Mandamus.

Now again comes the relator in his proper person and files a writ of error from the Supreme Court of the United States in this cause, which is allowed by the chief justice.

Citation filed.

Bond filed, which is approved by the chief justice.

Which said bond is in the words and figures following, to wit:

Know all men by these presents:

22 That we, Frank J. Bowman, as principal, and H. Clay Ewing, as surety, are held and firmly bound unto Edward A. Lewis, Charles S. Hayden, and Robert A. Bakewell, in the full

and just sum of one thousand dollars to be paid to the said Edward A. Lewis, Charles S. Hayden, and Robert A. Bakewell, their heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas, lately, at the April term, 1879, of the ——— court for the State of Missouri, in a suit depending in said court between Frank J. Bowman, relator, in case of State of Missouri ex rel. Frank J. Bowman, plaintiff, and Edward A. Lewis, Charles S. Hayden, and Robert A. Bakewell, respondents, judgment was rendered against the said Frank J. Bowman, relator, and the said Frank J. Bowman, relator, having obtained writ of error of the said
23 court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward A. Lewis, Charles S. Hayden, and Robert A. Bakewell, respondents, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such, that if the said Frank J. Bowman shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

FRANK J. BOWMAN. [SEAL.]
H. CLAY EWING. [SEAL.]

Approved by—

T. A. SHERWOOD, *C. J. S. C. Mo.*

24 STATE OF MISSOURI, *ss.*

I, Henry W. Ewing, clerk of the Supreme Court of the State of Missouri, certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings had in the above-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court at office, in the city of Jefferson, this 3rd day of October, A. D. 1879.

HENRY W. EWING, *Clerk.*

(Endorsed:) Missouri Sup. Court. No. 904½. Frank J. Bowman, plaintiff in error, vs. Edward A. Lewis et al. Filed 8th October, 1879.

EXHIBIT A.

Proceedings to remove from practice Frank J. Bowman, a member of the St. Louis bar, Knox, Krum, and Dryden, attorneys for relators in said matter. Frank J. Bowman, Wagner, Dyer & Emmons, R. S. MacDonald, Grover & Ellis, attorneys for respondent.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

Be it remembered that on the fifteenth day of July, eighteen hundred and seventy-eight, there was filed in the office of the clerk of the St. Louis Court of Appeals a transcript, which is in the words and figures as follows, to wit:

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

Be it remembered that heretofore, to wit, on the 7th day of November, A. D. 1877, there was filed in the office of the clerk of the circuit court a petition, in words and figures following, to wit:

The Complaint.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

In the Circuit Court of the city of St. Louis, in the matter of Frank J. Bowman, Attorney and Counselor at Law.

To the Honorable the Circuit Court of the city of St. Louis:

Now at this day come Alexander Martin, Edmund T. Allen, Joseph G. Lodge, Enos Clarke, and Edward C. Kehr, attorneys at law, who compose the committee of prosecution of the bar association of St. Louis, a corporation under the laws of this state, having for its object, among other things, "the maintenance of the honor and dignity of the profession of the law, the promotion of legal science, and of the administration of justice," and, at the instance and in obedience to the order of said association, prefer and exhibit to this honorable court the following charges against said Frank J. Bowman, an attorney and counselor at law of the city of St. Louis, State of Missouri, and ask that he be cited to appear at the bar of this honorable court to show cause, if any he has, why he should not be suspended from the practice of his profession, and removed from the bar of this state.

Charge First.—That said Frank J. Bowman, heretofore duly licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice and misdemeanor in his professional capacity—

In this: that on or about the 31st of July, 1875, in the city of St. Louis, said Frank J. Bowman, then and thereafter being a part-

ner in the practice of the law with Britton A. Hill, of St. Louis, under the firm-name of Hill & Bowman, was in said firm-name consulted and employed by Celsus Price, as superintendent of the the insurance department of this state, to render and give an opinion in relation to the request of the St. Louis Life Insurance Company, a corporation, to change its securities then in custody and charge of said department, which consultation and employment are contained in a letter which, at the last day aforesaid, was delivered by said Price to said Hill & Bowman, and which is in words and figures as follows:

July 31, 1875.

HILL & BOWMAN, Esqrs.

GENTLEMEN: The St. Louis Life Insurance Company desires to change its securities, and desires to place a deed of trust on the Life Insurance building and lot at the northwest corner of Sixth and Locust streets, in the city of St. Louis, Missouri, for, say, $350,000, to secure the payment of seventy notes for $5,000 each, payable to the order of the superintendent of the insurance department of Missouri, whenever demanded, for the payment of losses under policies existing in said company, or guaranteed or assumed by said company, and upon the delivery of said deed of trust the said company desires a return to it of the notes secured by deed of trust, and the state bonds now deposited with the insurance department for the security of the policy-holders of the said St. Louis Life Insurance Company and the Mound City Life Insurance Company and the St. Louis Mutual Life Insurance Company.

The question is, can this change of securities be made? Has the St. Louis Life Insurance Company the power to make such a deed of trust for such a purpose, and can the department return the securities to the St. Louis Life Insurance Company, now on hand for the security of policy-holders of either of said life insurance companies, on such change?

The St. Louis Life Insurance Company represents the Mound City, and the St. Louis Mutual Life Insurance Company has and assumed their liabilities, and all their assets are in the possession of said St. Louis Life Insurance Company.

If, in your opinion, this change of securities can be made, the next question is whether the St. Louis Life Insurance Company has an unincumbered title to said real estate at the northwest corner of Sixth and Locust streets, of St. Louis, and has the said company full power to convey it for the purpose contemplated?

I will furnish you an abstract of title to said property. Give your opinion in writing, and do so as promptly as practicable.

Very respectfully, your obedient servant,

CELSUS PRICE, *Superintendent.*

That said Britton A. Hill had full authority as partner aforesaid to act for and in behalf of said firm in relation to the matters

mentioned and contained in said letter; that, in compliance with the request of said letter, said Hill, immediately after the receipt thereof, undertook, for and in behalf of said firm, to counsel, advise, and act for said department in respect to the matters in said letter contained; that, in pursuance of said undertaking and employment, he consulted the officers, agents, and representatives of said department, and examined its records, documents, and papers in relation to the subject-matter of said employment.

That afterwards, viz., on the 2d day of August, 1875, said Hill, for and in behalf of said firm, executed and delivered to said department the following opinion:

OFFICE OF HILL & BOWMAN,
ST. LOUIS, *August* 2, 1875.

HON. CELSUS PRICE,
Superintendent of the Insurance Department, Missouri.

In reply to your letter, 31st day of July, ult., I state that the St. Louis Life Insurance Company has no power under the law to make any such conveyance in trust to secure note not made upon an actual loan. It is wholly immaterial as to the title to the property.

The securities you now hold cannot be changed for notes secured by a deed of trust on the Insurance building.

The opinions of the counsel of your predecessor are to the same effect, for a different reason. I could suggest to the Life Insurance Company a remedy for this dilemma; but, as the proposition stands, the department cannot do anything in the way of changing securities.

Very respectfully, your obedient servant,

BRITTON A. HILL,
For Hill & Bowman.

That, on or about the 4th day of August, 1875, said Bowman, at the city aforesaid, well knowing the relation of said firm of Hill & Bowman to said insurance department as attorneys thereof, in respect to the subject-matter of said letter of July 31, 1875, nevertheless, willfully and knowingly undertook and agreed with said St. Louis Life Insurance Company, for a consideration in money which was afterwards paid him, in the sum of $900, to procure and bring about the change of securities desired by said company; and to that end he, the said Bowman, entered into the employment of said company, counseling and acting in the interest of said company in respect to said change of securities; and, in pursuance of his said last-mentioned undertaking and employment, he, the said Bowman, willfully and knowingly continued the relation of said firm of Hill & Bowman to said department as attorneys thereof, in respect to said change of securities, and induced, procured, and delivered in person to said department the following opinion, for and in behalf of said firm of Hill & Bowman, as attorneys thereof, in relation to the matter and things mentioned and contained

in said letter of July 31, 1875, and said opinion of August 2, 1875, being the change of securities as aforesaid.

OFFICE OF HILL & BOWMAN,
ST. LOUIS, *August* 5, 1875.

Hon. CELSUS PRICE,
Superintendent of Insurance Department Missouri.

DEAR SIR: When my opinion of the 2d inst. was given, the fact was not made known to me that the St. Louis Life Insurance Company is in fact the Mound City Mutual Insurance Company, under a change of name. It appears that the Mound City Mutual Life Insurance Company was incorporated in May, 1868, under the general law of 1866, and became seized and possessed of all the property in question, on the northwest corner of Sixth and Locust, and the original company, the St. Louis Mutual, transferred its title to the Mound City Mutual Insurance, which was approved by decree of the St. Louis Circuit Court.

In view of these new facts it becomes necessary for me to modify my opinion so far as to say that, if the St. Louis Life Insurance Company holds its title under the Mound City Mutual and the St. Louis Mutual, the original company created by special charter, then, by force of the decision of the Supreme Court of the United States in the Washington University case, the original corporate powers of the St. Louis Mutual Insurance Company, transferred to the Mound City Mutual, and approved by the court, continue to exist, and are not affected by the 50th section of Wagner's Statutes, ed. 1872, p. 757.

Very respectfully, yours, etc.,

BRITTON A. HILL,
For Hill & Bowman.

That by means of his said relation to said insurance department as attorney thereof, and his acts and doings in that capacity or relation, and by means of his said relation to said St. Louis Life Insurance Company, and his acts and doings in the interest of said company, said change of securities was affected and accomplished.

Charge Second.—That said Frank J. Bowman, heretofore duly licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that said Frank J. Bowman, while being such attorney and counselor as aforesaid, in the city of St. Louis, on the 4th day of August, 1875, being then the attorney of the insurance department of this state, and having been such prior to said last-mentioned date, while holding the relation of attorney of said insurance department, in respect to the withdrawal and change of certain securities of great value and amount, in charge and custody of said department, claimed by the St. Louis Life Insurance Company, a corporation under the laws of this state, who desired and solicited from

said insurance department a change of the securities aforesaid—did, at the date and place aforesaid, knowingly and willfully enter into and become the agent, attorney, servant, and employé of said St. Louis Life Insurance Company, in respect to the said withdrawal and change of securities so desired by said company; and at one and the same time, in August, 1875, acted, counseled, and advised for and in behalf of said St. Louis Life Insurance Company and said insurance department; so that at one and the same time he acted for, and represented, both sides of the subject-matter in controversy, when in truth and law the interests, rights, and duties of the parties to the subject-matter in controversy were distinct, separate, and adverse.

Charge Third.—That said Frank J. Bowman, heretofore duly licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that he, the said Frank J. Bowman, at the city of St. Louis, in the State of Missouri, on or about the 5th day of August, 1875, having become the attorney of the St. Louis Life Insurance Company, a corporation, in respect to its claim, demand, and request for a withdrawal or change of certain of its securities of great value then in custody and charge of the insurance department of this state, thereafter, at said city, acted, counseled, and advised the said insurance department as its attorney, also in respect to said withdrawal or change of securities, while at the same time he was attorney as aforesaid for said St. Louis Life Insurance Company; and that the duties of him, the said Bowman, as attorney for said St. Louis Life Insurance Company and as attorney for said insurance department were, at the time of his said acting and discharge thereof, separate, distinct, conflicting, and inconsistent, and that a faithful discharge thereof was impossible, and every attempt thereat unlawful, dishonorable, and disgraceful to him, the said Bowman, in his professional capacity.

Charge Fourth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that said Frank J. Bowman, while being such attorney and counselor as aforesaid, on or about the 6th day of October, 1876, in the city of St. Louis, being then, before, and thereafter attorney and counselor of the insurance department of this state, in respect to a certain statement submitted by the Columbia Life Insurance Company, an insurance corporation, to said insurance department, the same being a consolidated statement disclosing in the aggregate the liabilities of the different insurance companies represented by said Columbia Life Insurance Company, then and there

knowingly and willfully agreed with the Life Association of America, an insurance corporation, its officers, agents, and representatives, which last-mentioned company owned eight-tenths of the stock of said Columbia Life Insurance Company, controlled its policy, and was pecuniarily interested and concerned in said statement by reason of its dealings with said Columbia Life Insurance Company, to secure for said life association and said Columbia Life Insurance Company the withdrawal and return of said statement from said insurance department for a large reward, in the sum of $7,000, which sum was promised and paid to said Bowman in consideration of the withdrawal and return of said statement, and other services and advantages to be rendered and performed by him, the said Bowman, for and in behalf of the said life association and said Columbia Life Insurance Company; and that, by means of said undertaking and agreement with said life association and said reward paid him, and by means of his said relation as attorney to said insurance department, said statement was withdrawn and returned to said Columbia Life Insurance Company, as requested by its officers and agents, and the officers and agents of said Life Association of America.

Charge Fifth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that said Frank J. Bowman, while being such attorney as aforesaid, on or about the 6th day of October, 1876, in the city of St. Louis, being at that time, before, and thereafter attorney and counselor of the insurance department of this state, in respect to the relation of the Columbia Life Insurance Company to said department, and the liability thereof to be called to account and to be proceeded against by said insurance department, knowingly and willfully entered into a corrupt understanding and agreement with the officers and agents of the Life Association of America, an insurance corporation, in consideration of a reward of $7,000, paid for this and other services, to release said Columbia Life Insurance Company from the demands and requirements of said insurance department, in respect to the filing of a statement of its condition, until the 1st day of February, 1877, or thereabouts, and not to proceed against said Columbia Life Insurance Company in the name or in behalf of said department until said last-mentioned day for any delinquency or liability of said Columbia Life Insurance Company.

Charge Sixth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that said Frank J. Bowman, while being such attorney and counselor aforesaid, having, on or about the 14th day of October, 1876, in the city of St. Louis, become the counselor and attorney of the Life Association of America, a life insurance corporation, for the period of one year thereafter, in all matters connected with the business of said company, in consideration of $7,000 paid him by said company for this and other services, did, on or about the 7th day of December, 1876, at the city aforesaid, for and in behalf of plaintiff therein, and as its attorney, willfully and knowingly institute, prosecute, conduct, manage, and thereafter carry on the suit of *Celsus Price, Superintendent of the Insurance Department*, v. *St. Louis Mutual Life Insurance Company*, being case No. 41,371, Room 2, St. Louis Circuit Court.

That the said Life Association of America owned eight-tenths of the capital stock of the Columbia Life Insurance Company, a life insurance corporation, and controlled its policy; had acquired a large amount of its assets, which assets had come from the St. Louis Mutual Life Insurance Company, by disputed conveyances, and for which assets said life association was liable in equity to be called upon to return; and was and is so related to, and interested in, the issues, matters, and things contained and embraced in the prosecution and conduct of said suit, said interest and relation being adverse to the interest, rights, and demands of the plaintiff therein as that said Bowman could not lawfully or faithfully discharge his duty as attorney of said plaintiff while in the service and employment of said Life Association of America as its counselor and attorney as aforesaid; and that said undertaking and attorneyship of said Bowman for and in behalf of said last-mentioned plaintiff, and every act done and step taken in pursuance thereof was and is unlawful, constituting malpractice, deceit, and misdemeanor in his professional capacity.

Charge Seventh.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that on or about the 7th day of December, 1876, at the city aforesaid, said Frank J. Bowman, while being such attorney and counselor as aforesaid, and being then, prior thereto, and thereafter attorney of the plaintiff in the suit of Celsus Price, Superintendent of the Insurance Department of Missouri, plaintiff, v. St. Louis Mutual Life Insurance Company, defendant, being case No. 41,371, St. Louis Circuit Court, Room 2—a suit having for its object the final settlement and winding up of the affairs of said last-mentioned defendant and the appointment of a receiver, and collection and distribution of its assets by the court and its officers thereof—did, at and before the date aforesaid, while attorney of said insurance department, in and in respect to said case, enter into

a corrupt and collusive agreement and understanding with the officers and agents of the said St. Louis Mutual Life Insurance Company, and the officers and agents of the Life Association of America, a life insurance corporation of this state, which was interested in the issues involved in said suit, by reason of its title to eight-tenths of the stock of the Columbia Life Insurance Company, its control of the policy of said last-mentioned company, and its eventual liability to account for a large portion of the assets of sai l last-mentioned company, which assets so acquired had been received originally from said St. Louis Mutual Life Insurance Company, by which he, the said Bowman, undertook to institute, prosecute, and carry on said suit in the interest, and subject to the orders, of said Life Association of America, its officers and agents, and did so institute and prosecute said suit in pursuance of said arrangement and understanding until on or about the 1st day of May, 1877.

Charge Eighth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that said Frank J. Bowman, while being such attorney and counselor as aforesaid, having, on or about the 14th day of October, 1876, in the city of St. Louis, become the counselor and attorney of the Life Association of America, a life insurance corporation, for the period of one year thereafter, in consideration of $7,000 paid him for this and other employments, did, on or about the 20th day of February, 1877, at the city aforesaid, for and in behalf of the plaintiffs therein, as their attorney, willfully and knowingly institute, prosecute, conduct, and manage the suit of Frederick Von Phul, Silas Bent, and William Spears, receivers of the St. Louis Mutual Life Insurance Company, plaintiffs, v. Columbia Life Insurance Company, defendant, being case No. ——, Room 4, St. Louis Circuit Court; that the said Life Association of America, as owner of eight-tenths of the capital stock of the Columbia Life Insurance Company, a life insurance corporation under the laws of this state, as controlling the policy and conduct of said Columbia Life Insurance Company, as being possibly accountable for a large portion of assets acquired from said company, was and is so related to, and interested in, the issues, matters, and things contained and embraced in the prosecution and conduct of said suit, which relation and interest was and is adverse to the interest, rights, and demands of the plaintiff therein, that said Bowman could not lawfully or faithfully discharge his duty as attorney of said receivers while in the service and employment of said Life Association of America, as its counselor and attorney aforesaid; and that every act done and step taken in said case in behalf of plaintiff was and is unlawful, constituting malpractice, deceit, and misdemeanor in his professional capacity.

Charge Ninth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that said Frank J. Bowman, while being such attorney and counselor as aforesaid, having, on or about the 14th day of October, 1876, in the city of St. Louis, become the counselor and attorney of the Life Association of America, a life insurance corporation, for the period of one year thereafter, in consideration of $7,000 paid him for this and other services to be rendered, did, at the place aforesaid, on or about the 22d day of February, 1877, for and in behalf of the plaintiff therein, as its attorney, willfully and knowingly institute, prosecute, conduct, and manage the suit of Celsus Price, Superintendent of the Insurance Department of the State of Missouri, v. Columbia Life Insurance Company; that the object and purpose of said suit, which was numbered 42,067, Room 5, Circuit Court of St. Louis County, was to determine the financial condition of said company, its right to continue business as a life insurance company, the collection of its assets and disbursements thereof, and the final liquidation and winding up of its affairs.

That said Life Association of America was concerned and interested in all the avowed objects and purposes of said suit; that it was owner of eight-tenths of the capital stock of said Columbia Life Insurance Company, and controlled its policy, and was contingently accountable to said company for a large portion of its assets acquired from said company, and that its interest and relation aforesaid, to said company, was adverse to the interest, rights, claims, and demands of the said insurance department, and of the plaintiff in said case.

That said Bowman could not lawfully or faithfully discharge his duty as attorney of said plaintiff while in the said service and employment of said Life Association of America as counselor and attorney aforesaid, and that every act done and step taken in the progress of said suit was unlawful, constituting malpractice, deceit, and misdemeanor in his professional capacity.

Charge Tenth.—That Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that on or about the 22d day of February, 1877, in the city of St. Louis, said Frank J. Bowman, while being such attorney and counselor at law as aforesaid, prior thereto, and ever thereafter, being attorney of the plaintiff in the matter of the suit of Celsus Price, Superintendent of said Insurance Department, plaintiff, v. The Columbia Life Insurance Company, defendant, case No. 42,067,

Room 5, St. Louis Circuit Court—which suit involved the financial condition of said Columbia Life Insurance Company, its right to continue the business of insurance in this state, the collection of its assets and distribution thereof, liquidation of its liabilities, and its responsibility to the claims and demands of said insurance department—immediately before the institution of said suit, on or about said 22d day of February, 1877, willfully and knowingly entered into a corrupt and collusive arrangement and understanding with the officers, agents, and representatives of said defendant, and the officers and agents of the Life Association of America, a life insurance company, which owned eight-tenths of the capital stock of said Columbia Life Insurance Company, and controlled its policy, wherein he, the said Bowman, agreed to institute and prosecute said suit in obedience to the wishes and requests of said defendant and said life association, their officers, agents, and servants, and to deliver to them an order of dismissal of said suit, complete in every respect except as to the date thereof, for their use, benefit, and advantage, and to dismiss said suit when thereto requested by them; that, in pursuance of said collusive arrangement and understanding, said Bowman submitted the bill or petition therein, before filing the same, to them for inspection and change or alteration by the officers, agents, and attorneys of said defendant and said Life Association of America, and did begin and prosecute said suit in their interest, under their sanction, counsel, knowledge, and approbation, until on or about the 15th day of March, 1877.

Charge Eleventh.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that he, the said Bowman, while being such attorney and counselor as aforesaid, on or about the 14th day of October, A. D. 1876, entered into an obligation in writing with the Life Association of America in words and figures following, to wit:

Received from the Life Association of America $7,000, in full, for retainer for services as attorney for one year from this date. In consideration of the payment of said sum, I agree to faithfully perform the duties of counselor for said term of one year in all matters connected with the business of said company.

October 14, 1876. FRANK J. BOWMAN.

The understanding of the above contract is that I shall appear both as counselor and attorney in any suits or proceedings in court concerning the business relations between the Life Association of America and the Columbia Insurance Company, during the coming year, whenever requested so to do on behalf of said Life Association of America.

FRANK J. BOWMAN.

That by the terms of said written obligation said Bowman agreed to act as attorney, and faithfully perform the duties of counselor, for said Life Association of America, in all matters connected with the business of said company, for the term of one year from said 14th day of October, A. D. 1876, and thus became and continued during said year to be an agent and employé of said life association; that said Life Association of America was a corporation duly organized under the laws of the State of Missouri, and transacting the business of life insurance in the State of Missouri and elsewhere; that while said written obligation was still in force, pursuant to the terms thereof, and before the expiration of one year from said 14th day of October, A. D. 1876, the said Bowman entered into the employment of Celsus Price, who then was the Superintendent of the Insurance Department of the State of Missouri, as his legal counsel, and in behalf of said department, in instituting and prosecuting the following causes in the St. Louis Circuit Court, viz:

Celsus Price, Superintendent of Insurance Department of the State of Missouri, v. *St. Louis Mutual Life Insurance Company;* petition for injunction and receiver filed December 7, 1876, being case No. 41,371, in Room 2.

Celsus Price, Superintendent of Insurance Department, v. *Columbia Life Insurance Company;* petition filed February 22, 1877, being case No. 42,067, in Room 5.

That his entering into the employment of the said superintendent of the insurance department as aforesaid, by said Bowman, while said written obligation of employment with the said life association remained in full force and effect, was in contravention of the express law of the State of Missouri. That the acts of said Bowman above complained of were committed by him in the city of St. Louis and State of Missouri.

Charge Twelfth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled to practice as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that he, the said Bowman, while being such attorney and counselor as aforesaid, on or about the 14th day of October, A. D. 1876, entered into an obligation in writing with the Life Association of America in words and figures following, to wit:

Received from the Life Association of America $7,000, in full, for retainer for services as attorney for one year from this date. In consideration of the payment of said sum I agree to faithfully perform the duties of counselor for said term of one year in all matters connected with the business of said company.

October 14, 1876. FRANK J. BOWMAN.

The understanding of the above contract is that I shall appear both as counselor and attorney in court concerning the business re-

lations between the Life Association of America and the Columbia Insurance Company, during the coming year, whenever requested so to do on behalf of said Life Association of America.

FRANK J. BOWMAN.

That before the expiration of one year from said 14th day of October, 1876, and while said obligation in writing was in full force, to wit, on or about the 15th day of March, 1877, said Frank J. Bowman unlawfully agreed and combined with William A. Brawner, H. D. McKay, John H. Carroll, and J. F. Houghton to secure a change in the management of the affairs of said Life Association of America, which then was a corporation organized under the laws of the State of Missouri, whereby the management of the affairs of said corporation should be placed in the hands of said H. D. McKay, A. M. Clark, and their associates, in order that great pecuniary advantage might thereby accrue to the said Bowman, Brawner, McKay, Carroll, and Houghton, to the great injury and loss of the said Life Association of America and its policy-holders; that, for his services in promoting said unlawful agreement and combination, said Bowman exacted and received from said Brawner, Carroll, McKay, a d Houghton, on or about the day last above named, the sum of $3,500. That the acts of said Bowman above complained of were committed by him in the city of St. Louis and State of Missouri.

Charge Thirteenth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that at the date hereinafter mentioned he, the said Bowman, while being such attorney and counselor aforesaid, was under an obligation in writing to act as attorney, and "to faithfully perform the duties of counselor," for the Life Association of America, a corporation, for the term of one year, which had not then expired, in all matters connected with the business of said company, and was at that date in the employment of the insurance department of the State of Missouri, as its attorney, and on or about the 15th day of March, 1877, accepted from William A. Brawner, H. D. McKay, John H. Carroll, and J. F. Houghton the sum of $3,500 as a reward for effecting a re-insurance of $10,000,000 of life insurance risks of said Life Association of America in the Pacific Mutual Life Insurance Company, and for procuring such a change in the officers and directors of said Life Association of America as would place the management of its affairs in the hands of H. D. McKay, A. M. Clark, and their associates; that said Bowman accepted said sum of money, and entered upon said employment of said Brawner, McKay, Carroll, and Houghton as aforesaid, without the consent of said Life Association of America. That the acts of said Bowman above complained of were committed by him in the city of St. Louis and State of Missouri.

Charge Fourteenth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled as an attorney and counselor at law, practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity as an attorney—

In this: that he, the said Bowman, while being such an attorney and counselor at the date hereinafter stated, was under an obligation in writing to act as attorney, and "to faithfully perform the duties of counselor," for the Life Association of America, a corporation duly organized under the laws of the State of Missouri, and engaged in the business of life insurance, in all matters connected with the business of said company; that at said date, to wit, on or about the 15th day of March, A. D. 1877, said Bowman claimed to be the attorney for the insurance department of the State of Missouri, and agreed with William A. Brawner, H. D. McKay, John H. Carroll, and J. F. Houghton, for the consideration of $3,500 then paid to him, and $3,500 thereafter to be paid to him, to use his influence as counselor and attorney for said life association, and his power as attorney for said insurance department of the State of Missouri, to bring about a re-insurance in the Pacific Mutual Life Insurance Company of $10,000,000 of the risks of said life association, and to place the management of the affairs of said life association in the hands of H. D. McKay and others, the said H. D. McKay then being in the employ of said Pacific Mutual Life Insurance Company. That the acts of said Bowman above complained of were committed by him in the city of St. Louis and State of Missouri.

Charge Fifteenth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that the said Bowman, while being such attorney and counselor as aforesaid, on or about the 15th day of March, A. D. 1877, induced from William A. Brawner, H. D. McKay, John H. Carroll, and J. F. Houghton the payment of the sum of $3,500, on the pretence and promise to them then made that he could and would, as the attorney and counselor of the Life Association of America, a corporation doing a life insurance business, and as the attorney of the insurance department of the State of Missouri, secure for said Brawner, McKay, Carroll, and Houghton a change in the management of said life association, by which the affairs of said association should be placed in the hands of H. D. McKay, A. M. Clark, and others; and that he could and would, as the attorney of said association and of said insurance department, secure a re-insurance of $10,000,000 of the risks of said life association in the Pacific Mutual Life Insurance Company, the said Bowman well knowing, at the time he received said money and so pretended and

promised, that he could not make good his pretences and promises as aforesaid except through bribery of the officers of said life association, and a corrupt and oppressive use of his influence with Celsus Price, who then was the superintendent of said insurance department. That the acts of said Bowman above complained of were committed by him in the city of St. Louis and State of Missouri.

Charge Sixteenth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that on or about the 15th day of March, A. D. 1877, and while he, said Bowman, was such attorney and counselor as aforesaid, and was under an obligation in writing to act as attorney, and "faithfully perform the duties of counselor," in all matters connected with the business of the Life Association of America, a corporation doing a life insurance business under the laws of the State of Missouri, he, the said Bowman, for the consideration of $3,500, then to him in hand paid by William A. Brawner, H. D. McKay, John H. Carroll, and J. F. Houghton, undertook to procure for the said McKay, together with A. M. Clark and others, the management and control of the affairs of said life association, and pursuant to such undertaking secured the appointment by the superintendent of the insurance department of the State of Missouri, as one of the examiners of the affairs of said Life Association of America, the said H. D. McKay, who then was, to the knowledge of said Bowman, a salaried officer, agent, and employé of the Pacific Mutual Life Insurance Company; that said appointment of said McKay was contrary to the express terms of law, and a violation on the part of said Bowman of his said written obligation to said Life Association of America. That the acts of said Bowman above complained of were committed by him in the city of St. Louis and State of Missouri.

Charge Seventeenth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled as an attorney and counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that on or about the 20th day of February, 1877, at the city of St. Louis, in said State of Missouri, he, the said Bowman, being then and there such attorney and counselor as aforesaid, and the attorney of the plaintiff in the case of The State of Missouri v. Miller et al., a case then pending in the Supreme Court of the State of Missouri, without the consent of said plaintiff, or of any one representing plaintiff, willfully and knowingly accepted from said defendant a reward of $350 dollars, and in consideration therefor executed and delivered to said defendants in said case a con-

tract or obligation contained in two instruments made by him in the words and figures following, to wit:

(1.) Received from A. W. Mead $350 to defray extra expenses of printing and submitting on printed arguments case of State v. Miller, same to be returned in thirty days unless within that time case is submitted to the supreme court by consent of parties, as in my letter of this date indicated.

FRANK J. BOWMAN,
Attorney for Police Commissioners.

February 20, 1877.

And—

(2.)

ST. LOUIS, *February* 20, 1877.

Hon. James O. Broadhead and A. W. Mead, Esqrs.,
Attorneys for George Miller.

GENTLEMEN: So far as I am personally concerned, I have no objection to a submission of the case of State v. Miller upon printed brief and argument, provided the additional labor and cost, which I should estimate at about $350, is paid by Mr. Miller, without regard to final determination of suit. Entertaining myself no doubt as to the strength of the case for the state, I care not how soon it may be reached in the supreme court; but, as I am acting in this matter by employment of the board of police commissioners of the city, I do not feel at liberty to take any action in the premises looking to the advancement of the case upon the docket, or submission upon printed brief, which amounts to an advancement, without their consent and instruction so to do. Upon your depositing the money to defray extra expenses, and obtaining such consent from my clients, you can rely upon my acting without delay.

Yours, very respectfully, FRANK J. BOWMAN.

That said $350 was accepted from said defendants, among other things, for labor to be rendered, done, and performed for and in behalf of the plaintiff in said case; that the said thirty days have expired and said money has never been returned, and said cause has been submitted to said court for final decision.

Charge Eighteenth.—That said Frank J. Bowman, heretofore licensed, sworn, and enrolled as an attorney nnd counselor at law of this court, and now practicing as such in said city and state, has been guilty of malpractice, deceit, and misdemeanor in his professional capacity—

In this: that on or about the 20th day of February, 1877, at the city of St. Louis, he, the said Bowman, being then and there such attorney and counselor as aforesaid, and the attorney of the plaintiff in the case of *State of Missouri* v. *Miller* et al., a case then pending in the supreme court of said state, without the consent of said plaintiff, or any one authorized to represent said plaintiff, in consideration of the sum of $350, or less, then and there paid him by said defendants, agreed with them, so far as he, the said Bowman, was

concerned, to submit said cause to the supreme court for final decision, under Rule 17 of said court, or in thirty days to return said $350, if in that time he did not obtain the consent of the plaintiff for such submission. That said agreement was made in the interest of said defendants, who, by virtue of such submission, would have the benefit of an advancement of said cause upon the docket of said court, and said plaintiff was opposed and objected to such submission and advancement, and acquainted said Bowman with such objections. That more than thirty days have elapsed, and said money so received as aforesaid has not been returned.

SAMUEL KNOX,
CHESTER H. KRUM,
JOHN W. DRYDEN.
For Relators.

STATE OF MISSOURI, } *ss.*
CITY OF ST. LOUIS. }

Edmund T. Allen, one of the relators aforesaid, makes oath and says that the foregoing charges and matters therein as stated he believes to be true. EDMUND T. ALLEN.

Sworn to and subscribed before me, this November 7th, 1877.
J. FRED. THORNTON, *Clerk.*

And afterwards, to wit, on the 8th day of November, A. D. 1877, there was filed in said cause the appearance of Frank J. Bowman, in words and figures following, to wit:

Appearance of F. J. Bowman.

And now by his attorneys undersigned comes said Frank J. Bowman, and waives the right to citation and service thereof in the above matter, enters his appearance, and asks for seven full days in which to plead herein.

WAGNER, DYER & EMMONS,
GROVER & ELLIS,
R. S. McDONALD,
Attys. for Frank J. Bowman.

And afterwards, to wit, on the 14th day of November, A. D. 1877, said Frank J. Bowman filed his plea herein, in words and figures following, to wit:

Plea.

And now at this day comes said Frank J. Bowman, and pleading to the complaint or information herein filed against him, says, that he is not guilty of any of the charges preferred and exhibited to this honorable court against him, in the said complaint or information, and of this he puts himself upon the country.

WAGNER, DYER & EMMONS,
R. S. McDONALD,
GROVER & ELLIS,
Attys. for Frank J. Bowman.

And afterwards, at the December term, A. D. 1877, and at the February and April terms, A. D. 1878, of said circuit court, the following proceedings were had in said cause, to wit:

Trial Begun.

THURSDAY, *January 3d*, 1878.

Now at this day come the relators herein, Alexander Martin, Edmund T. Allen, Joseph G. Lodge, Enos Clarke, and Edward C. Kehr, by their attorneys, and also come the respondent, Frank J. Bowman, by his attorneys, thereupon comes also a jury, to wit, E. O. Stanard, Charles L. Thompson, Ben May, W. M. Senter, William C. Lange, Richard Hospes, John B. Gray, Francis L. Haydel, David Nicholson, M. W. Willis, J. K. Cummings, and F. B. Chamberlain, twelve good and lawful men, who, being duly elected, tried, and sworn well and truly to try the issues joined between the parties hereto, and a true verdict render according to the evidence, thereupon the trial progresses, and not being fully terminated at the adjournment of court, is laid over until to-morrow.

* * * * * * * *

Trial Progressed.

THURSDAY, *January 31st*, 1878.

And now again, at this day, come said relators and respondent, by their respective attorneys, and also come the jury heretofore sworn in this cause, thereupon the trial progressed, and the testimony having been all heard and the argument of counsel being concluded, the cause is submitted to said jury, who retire to consider of their verdict.

Verdict.

FRIDAY, *February 1st*, 1878.

And now again, at this day, come the relators and the respondent in this cause, by their respective attorneys, and also come the jury heretofore empaneled and sworn in this cause, and the said jury having agreed upon their verdict, do, upon their oaths, say: "We, the jury, find the respondent, Frank J. Bowman, guilty under the first charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the second charge. We, the jury, find the respondent, Frank J. Bowman, not guilty under the fourth charge. We, the jury, find the respondent, Frank J. Bowman, not guilty under the fifth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the sixth charge. We, the jury, find the respondent guilty under the seventh charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the eighth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the ninth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the tenth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the eleventh charge.

We, the jury, find the respondent, Frank J. Bowman, guilty under the twelfth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the thirteenth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the fourteenth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the fifteenth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the sixteenth charge. We, the jury, find the respondent, Frank J. Bowman, guilty under the seventeenth charge. We, the jury, find the respondent, Frank J. Bowman, not guilty under the eighteenth charge. Verdict of jury filed.

Motions in Arrest and for New Trial Ov'd.

MONDAY, *February 25th*, 1878.

Now, at this day, the court being fully advised of and concerning the motions heretofore submitted herein in arrest of judgment and for a new trial, doth order that said motions be overruled.

Judgment.

MONDAY, *March 11th*, 1878.

IN THE MATTER OF FRANK J. Bowman, attorney and counsellor at law. } Judgment.

Now, at this day, it appearing to the court heretofore, to wit, on the first day of February, A. D. 1878, at the December term, 1877, of this court, the jury empaneled in said cause did, upon their oaths, agree upon a verdict, and therein did say that they found said respondent, Frank J. Bowman, guilty under the first, second, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth charges in said complaint contained, and further, that they found him not guilty under the fourth, fifth, and eighteenth charges therein set forth. And it appearing further to the court that heretofore, to wit, on the second day of February, A. D. 1878, as evidenced by his stipulation on said last-named day, entered of record in said cause, the said respondent, Frank J. Bowman, did consent and agree that judgment upon said verdict might be entered at the present February term, with the same force and effect as of the said December term of this court; and said respondent having on *on* said second day of February, 1878, filed herein his motion in arrest of judgment and motion for a new trial, both of which said motions were, at the present February term, to wit, on the 25th day of February, A. D. 1878, by the court overruled: Now, it is, therefore, considered by the court, that the said respondent, Frank J. Bowman, having been found by the said jury to be not guilty of the charges preferred against him, numbered four, five, and eighteen, as aforesaid, that he stand and now be adjudged acquitted thereof; and that said respondent having been found guilty as aforesaid under

the charges numbered one, two, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, and the court having fully considered the nature of the facts alleged in said charges, it is now ordered and adjudged that he, the said respondent, Frank J. Bowman, be, and he is hereby, removed from the practice of law in this state; and it is further ordered and adjudged that the said respondent pay the costs of this proceeding, and that execution issue therefor.

Motion filed March 12, 1878, *in arrest and for a new trial ov'd.*

WEDNESDAY, *March 13th*, 1878.

Now, at this day, comes the respondent by attorney, and submits to the court the motions heretofore, on March 12th, 1878, filed in this cause in arrest of judgment and for a new trial, and the court having heard and being fully advised of and concerning the premises, doth order that said motions be overruled.

Affidavit and bond for appeal filed, and appeal granted.

WEDNESDAY, *March 13th*, 1868.

Now, at this day, comes said respondent in his proper person, and files herein his affidavit and bond for appeal, which bond is aproved by the court, and on motion of said respondent it is ordered by the court that an appeal to the St. Louis Court of Appeals be granted said respondent from the judgment rendered in this cause.

Bill of exceptions to be presented to counsel for relators by Mar. 23, 1878.

WEDNESDAY, *March 13th*, 1878.

Now, at this day, on motion of respondent, in proper person, it is ordered by the court, that the bill of exceptions in this cause be presented to the counsel for the relators herein on or before the twenty-third day of March, 1878.

Order granting appeal set aside.

MONDAY, *March 18th*, 1878.

Now, at this day, on motion of Frank J. Bowman, by Hiram J. Grover, his attorney, it is ordered by the court, that an order heretofore made in this cause, allowing said Frank J. Bowman an appeal from the judgment against him to the St. Louis Court of Appeals, be, and is hereby, vacated and set aside.

Bill of exceptions filed, affidavit and bond for appeal refiled, and appeal granted.

SATURDAY, *March 30th*, 1878.

Now, at this day, comes Frank J. Bowman, by attorney, and files herein a bill of exceptions, and also presents to the court and refiles the affidavit and bond for appeal heretofore filed herein,

which bond is approved by the court, and on motion of said Frank J. Bowman it is ordered by the court that an appeal to the St. Louis Court of Appeals be granted him from the judgment rendered in this cause.

* * * * * * * * *

And thereafter, on the following day, the respondent moved to set aside the verdict and for a new trial, and also moved the court for an arrest of judgment, which motions were in words and figures as follows:

Motion for New Trial.

Now comes the respondent and moves the court to arrest the judgment and grant a new trial in this case for the following reasons, to wit:

1. The court admitted improper and illegal evidence for the relators, against the objections of the respondent.
2. The court rejected and excluded proper and legal evidence offered by the respondent.
3. The verdict is against the evidence and the weight of evidence.
4. The verdict is against the law.
5. The verdict is for the relators when it should have been for the respondent.
6. The court erred in giving improper and illegal instructions for the relators, and refusing proper and legal instructions for the respondent.
7. The petition states that the relators appear and prosecute the case at the instance of, and in obedience to, the order of the Bar Association of St. Louis, a corporation under the laws of this state, and there is no evidence that any such corporation is in existence, or that the relators have any right or authority whatever for the proceeding.
8. The bar association is in fact the party plaintiff to the suit, and the judge who tried the cause is a member of said bar association, and, therefore, disqualified to preside at the trial, and this fact only came to the knowledge of the respondent and his counsel within four days of the termination of the trial.
9. One of the jurors, Richard Hospes, was an incompetent juror. He stated on his examination that he was prejudiced against the respondent, and that, if the evidence given at the trial were equal—that is, as strong for one side as for the other—he would find against the respondent, in accordance with his preconceived prejudice; and he also stated to another, after being called and before he was accepted and sworn, that the respondent was a "highwayman," and ought to be treated as such; and this fact did not reach respondent till after said juror was sworn.
10. The misdemeanors, as charged in the first and second charges of the complaint, were barred by the statute of limitations, as they

were not prosecuted within one year from the time of their alleged commission.

FRANK J. BOWMAN,
By Wagner, Dyer, and R. S. McDonald et al., Attorneys.

Motion in Arrest of Judgment.

Now, at this day, comes the respondent, Frank J. Bowman, by his counsel, and moves the court to arrest the judgment herein for the reasons following, to wit:

1. The prosecution should have been conducted in the name of the State of Missouri.
2. The prosecution has been conducted in the name of an improper party.
3. There is an improper joinder of several distinct offences in each and every charge in the information contained, and upon which the respondent was found guilty, and upon which the jury rendered a general verdict.
4. The misdemeanors or other offences complained of, in each and every one of the charges upon which the respondent was found guilty, are charged therein to have been committed more than six months prior to the filing of said charges or information, and consequently barred by the statute.
5. In each and every charge upon which the respondent was found guilty he was charged therein with a misdemeanor, and there is no averment that he had been indicted therefor and convicted thereon.
6. The charges or information are otherwise vague and so uncertain that the same will not support a judgment.
7. In each and every charge upon which the jury found the respondent guilty, there is an improper joinder of an indictable with a non-indictable offence.

FRANK J. BOWMAN,
By his counsel, R. S. McDonald and others.

And on same day an agreement was duly executed and filed consenting, on the part of the relators and the respondent, to the entering of judgment upon the verdict at the following term of the court, which agreement is in the words and figures as follows:

Stipulation as to Entering Judgt. at Feb'y Term, 1878.

In the above-entitled matter it is agreed by respondent, Frank J. Bowman, that the judgment of the court, which shall be rendered upon the verdict of the jury, if any be so rendered, may be rendered at he next February, 1878, term of this court, with the same force and effect as if at the present December, 1878, term, and when so rendered, may be rendered, if the court so determine, nunc pro tunc as of the day of the finding said verdict, and the respondent waives upon the record all objection to said judgment when so rendered, based upon the ground that it is rendered at the February

term and not at said December term, and the said relators, by their attorneys, also waive all objection to said judgment, based upon the like grounds.

FRANK J. BOWMAN.
KNOX, KRUM & DRYDEN,
Attys. for relators in said matter.

And afterwards, within four days of the time when said verdict was rendered, the following amended motion for a new trial was filed by the respondent in the words and figures following:

Amended Mo. for New Trial.

And now comes Frank J. Bowman, and files this his amended motion for a new trial and the setting aside the verdict and judgment rendered herein, for the following reasons, viz:

"1. The court admitted improper and illegal evidence for the relators, against the objection of the respondent.

2. The court rejected and excluded proper and legal evidence offered by the respondent.

3. The verdict is against the evidence and the weight of evidence.

4. The verdict is against the law.

5. The verdict is for the relators, when it should be for the respondent.

6. The court erred in giving improper and illegal instructions for the relators, and refusing proper and legal instructions for the respondent.

7. The petition states that the relators appear and prosecute the case at the instance of, and in obedience to, the order of the Bar Association of St. Louis, a corporation under the laws of this state, and there is no evidence that any such corporation is in existence, or that the relators have any right or authority whatever for the proceedings.

8. The bar association is in fact the party plaintiff to the suit, and the judge who tried the cause is a member of said bar association, and, therefore, disqualified to preside at the trial, and this fact only came to the knowledge of the respondent and his counsel within four days of the termination of the trial.

9. One of the jurors, Hospes, was an incompetent juror. He stated on his examination that he was prejudiced against the respondent, and that, if the evidence given at the trial were equal—that is, as strong for one side as for the other—he would find against the respondent, in accordance with his preconceived prejudice; and he also stated to another, after being called, and before he was accepted and sworn, that the respondent was a "highwayman," and ought to be treated as such; and this fact did not reach respondent until after said juror was sworn.

Tenth. The counsel for relators, Samuel Knox, in making his closing argument to the jury, and to which respondent had no opportunity for reply, misstated the evidence, and misled the jury by misstating the material portions of the evidence of Henry H. Denison, Henry W. Hough, and other witnesses, as also by misstating the facts as to alleged alterations in the report of respondent's opening argument, and by statements untrue in fact misled and deceived the jury, to the great prejudice of the respondent.

FRANK J. BOWMAN.
WAGNER & DYER.

And afterwards, in support of the motion for a new trial, the following affidavit of Rodney D. Wells was duly filed, which affidavit was in words and figures following:

Affidavit of Rodney D. Wells.

Rodney D. Wells, of lawful age, being duly sworn, on his oath says: I was summoned as a special juror in the case of Alexander Martin et al. against Frank J. Bowman, set for trial on Jany. 2nd, 1878. I appeared and asked to be excused from serving, on the ground that I had served seven years as a fire-warden. My request was denied by the court, and I took my seat in the jury box for examination with others summoned as special jurors, and was retained after examination as one of the panel of eighteen from which the jury of twelve was selected to try the cause. While in the jury box I had a conversation with a gentleman, whose name I then for the first time learned was Hospes. I think he stated he was cashier of some bank. In my conversation with said Hospes, in speaking of the respondent, Frank J. Bowman, the said Hospes said to me: "I look upon Bowman as no better than a highway robber," or words to that effect; said Hospes expressed his delight that the proceedings against Bowman had been instituted, and said, "there are two or three others that I know of that ought to be in the same boat," or words to that effect; adding, "there is one of them in the court-room now," naming and pointing out to me a well-known attorney. I afterwards saw said Hospes accepted and sworn as a juror in said case. I expressed my surprise on the day following, and several times since, to men of my acquaintance, that a man so much prejudiced should permit himself to sit as a juror in a cause in which he had so strong a prejudice. I have never had any conversation with said Bowman or with any attorney or person representing said Bowman, about this matter, until this 2nd day of February, 1878, and don't think I have spoken to said Bowman for eight years last past until to-day, when I met him for the first time to make the foregoing affidavit by request of one of his friends, to whom I had some time before stated the conversation I had with said Hospes as above narrated.

RODNEY D. WELLS.

Subscribed and sworn to before me, this 2nd day of February, A. D. 1878, as witness my hand and notarial seal.

SINNETT A. YOUNG,

Notary Public in and for the City and County of St. Louis.

Qualified Feby. 26, 1874; commission expires Feby. 21st, 1878.

And thereafter, on the — day of February, 1878, relators filed a counter-affidavit of Richard Hospes, in words and figures as follows:

Affidavit of Richd. Hospes.

Richard Hospes, being duly sworn, states that he has read the following printed copy of the affidavit filed by Rodney D. Wells in said cause:

[See affidavit of Rodney D. Wells.]

That it is true, as stated by said Wells, that affiant had a conversation with said Wells in the jury box, but that affiant did not express to said Wells his delight that the said proceeding had been instituted against said Bowman; that said Wells has not stated fully the conversation had between himself and affiant. Said affiant states that in said conversation had as aforesaid with said Wells, which was had in an undertone, to avoid disturbing the proceedings being then had in the court-room, affiant stated to said Wells that he, affiant, had read publications made in the newspapers touching said Bowman, and, among other things, the newspaper report of proceeding had, and testimony taken before Judge Jones, and that if the matters appearing in such publications were true, that then affiant could not regard Bowman as being any better than a highway robber, and that affiant thus predicated such statement on the hypothesis of the truth of such statement and upon no other considerations whatever.

Affiant states that the said Wells does not give the whole of the statement made to him by affiant, and has omitted to state the basis, as aforesaid, upon which affiant rested his remark in relation to said Bowman. Affiant further states that he did not in any manner say or express anything to said Wells which did or could indicate pleasure or delight on the part of affiant touching the institution of said proceedings against said Bowman. Affiant states that the institution of said proceedings did not cause him delight or pleasure in any manner, and that what he did say to said Wells, in regard to the proceedings against said Bowman, was, that if the charges were true, then the proceedings ought to have been instituted. Said affiant states further, that he makes this affidavit at the request of counsel for the relators, and in no sense whatever as a volunteer.

RICHARD HOSPES.

Subscribed and sworn to before me, this 7th day of Feby., 1878.

GIDEON D. BANTZ,

Notary Public City and County of St. Louis, State of Missouri.

I was qualified February 26, 1876; commission expires October 12, 1881.

And in support of said motion an affidavit to the effect that said Wilbur F. Boyle, judge of the circuit court, was an honorary member of the Bar Association of St. Louis, was filed by the respondent in words and figures as follows:

Affidavit of F. J. Bowman.

Frank J. Bowman, being duly sworn, on his oath deposes and says: that his attention was not directed to the fact that W. F. Boyle, judge of the St. Louis Circuit Court, was a member of the bar association until after the commencement of the trial of the above-entitled cause, and after a jury was empaneled and the trial was in progress, and that his first knowledge of such fact was obtained a few days prior to the time when the jury returned their verdict in this cause.

FRANK J. BOWMAN.

Sworn to and subscribed before me, this 9th day of Feby., 1878.

J. FRED. THORNTON, *Clerk.*

An affidavit of John M. Krum, with copy of the constitution and by-laws and list of members of the bar association attached thereto, concerning the relation of said Wilbur F. Boyle to the said bar association, was filed on the — day of February, 1878, in words and figures as follows:

Affidavit of Jno. M. Krum.

John M. Krum, of lawful age, being duly sworn, on his oath says, that for and during the year ending November 1st, 1877, he was the president of the Bar Association of St. Louis; that during the said time and prior to the institution of the charges in the above-styled matter, namely, on or about the 25th of September, 1877, said respondent, Bowman, requested of affiant information as to what proceedings had been taken by said association as to certain charges or proceedings against him, and that on or about the same 25th day of September, affiant, in pursuance of said request, sent to said Bowman a letter giving him the information requested, and also sent to him a copy of the printed pamphlet containing the copies of the charter, constitution, by-laws, and list of members of the said bar association, hereto annexed, marked Exhibit "A." Affiant further says, that within a day or two next thereafter he met the said Bowman on 5th street, in said city, and said Bowman then informed affiant that he had received the letter which affiant had sent, and the copy of said pamphlet, containing charter, &c.; and thanked affiant for sending the same to him.

JOHN M. KRUM.

Subscribed and sworn to this 9th day of February, 1878. Commission expires December 30th, 1881.

LOUIS R. TATUM,
Notary Public, St. Louis City, Mo.

Charter, Const'n, &c., of Bar Assn., attach'd to Dep. of Jno. M. Krum.

Charter, Constitution, and By-Laws of the Bar Association of the City of St. Louis. Adopted March 23, 1874.

* * * * * * * * *

List of Members.

* * *

Bakewell, R. A.

* * *

Boyle, W. F.

* * *

Hayden, C. S.

* * *

Lewis, E. A.

* * *

And which were offered and read in evidence on the hearing of said motions.

And on the —— day of February, 1878, the respondent filed his affidavit in support of said motion in words and figures as follows:

Affi. of Respt. in support of mo. for new trial, &c.

STATE OF MISSOURI, } *ss.*
COUNTY OF ST. LOUIS. }

Frank J. Bowman, being duly sworn, on his oath deposes and says, that his attention was not directed to the fact that W. F. Boyle, judge of the St. Louis Circuit Court, was a member of the bar association until after the commencement of the trial in the above-entitled cause, and after a jury was empaneled and the trial was in progress, and that his first knowledge of such fact was obtained a few days prior to the time when the jury returned their verdict in this cause.

FRANK J. BOWMAN.

Sworn to and subscribed before me, this 9th day of February, 1878. J. FRED. THORNTON, *Clerk.*

And on the —— day of ———, 1878, the relators filed the following affidavit of Alexander Martin:

Affidavit of Alex'r Martin.

Alexander Martin, being first duly sworn, *sas* that he has been a member of the Bar Association of St. Louis since its organization in March, 1874.

That prior to the entrance of Hon. W. F. Boyle upon his judicial duties as judge of the St. Louis Circuit Court he was a member of said association. That after his election to said office, he could be, under the constitution and by-laws of said association, only an hon-

orary member, owing no duties and being under no obligation to said association, exempt from all dues and requisitions in its behalf. That since his election aforesaid this affiant, who has been a regular attendant at the meetings, has never seen Judge Boyle present; and this affiant says that said Judge Boyle has never, to his knowledge, taken any part, either directly or indirectly, in said association or its affairs.

And this affiant further says that the fact that said Judge Boyle was a member of the said association prior to his election, and that he, after said election, could hold only the nominal relation of an honorary member, was known to Messrs. Grover & McDonald at the beginning of this trial; that said Grover & McDonald were members of said association prior to the election of said Judge Boyle, and were both acquainted with said Judge Boyle, and had attended meetings of said association when said Boyle was present prior to his election; that said Grover and McDonald were and still remain members of said association, and were such at the time they acted as attorneys of respondent in this case.

ALEX. MARTIN.

Sworn to and subscribed before me, February 9th, 1878.

J. FRED. THORNTON, *Clerk.*

And the court having heard and considered said motions for a new trial, and in arrest of judgment, did, on the —— day of February, 1878, overrule the same, to which ruling and action of the court the respondent then and there excepted.

And on the —— day of ———, 1878, *a document in words and figures as follows* was presented to the court by the respondent, but the court refused to receive the same, to which refusal the respondent then and there excepted at the time.

And on the —— day of March, 1878, the court entered judgment against the respondent in this cause, in words and figures as follows:

Judgment.

MONDAY, *March 11th*, 1878.

IN THE MATTER OF FRANK J. BOWMAN, ATTORNEY AND COUNSELOR AT LAW. } Judgment.

Now, at this day, it appearing to the court that heretofore, to wit, on the 1st day of February, A. D. 1878, at the December term, 1877, of this court, the jury empaneled in said cause did, upon their oaths agree upon a verdict, and therein did say that they found said respondent, Frank J. Bowman, guilty under the first, second, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth charges in said complaint contained; and further, that they found him [not] guilty under the fourth, fifth, and eighteenth charges therein set forth.

And it appearing to the court that heretofore, to wit, on the second day of February, A. D. 1878, as evidenced by his stipulation,

on said last-named day entered of record in said cause, the said respondent, Frank J. Bowman, did consent and agree that judgment upon said verdict might be entered at the present February term with the same force and effect as of the said December term of this court, and said respondent having, on said 2d day February, 1878, filed herein his motion in arrest of judgment and motion for a new trial, both of which said motions were at the present February term, to wit, on the 25th day, A. D. 1878, by the court overruled.

Now, it is therefore considered by the court that the said respondent, Frank J. Bowman, having been found by the said jury to be not guilty of the charges preferred against him, numbered four, five, and eighteen as aforesaid, that he stand and now be adjudged acquitted thereof; and that said respondent having been found guilty, as aforesaid, under the charges numbered one, two, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, and the court having fully considered the nature of the facts alleged in said charges, it is now ordered and adjudged that the said respondent, Frank J. Bowman, be, and he is hereby, removed from the practice of law in this state; and it is further ordered and adjudged that the said respondent pay the costs of this proceeding, and that execution issue therefor; to which action of the court the respondent then and there excepted.

And, thereafter, on the — day of March, 1878, the respondent filed his motion for a new trial in words and figures as follows:

Now, at this day, comes the respondent, Frank J. Bowman, by his attorneys, and moves this hon. court to set aside the judgment and the sentence of the court and grant him a new trial for the following reasons, to wit:

"1. The court admitted improper and illegal evidence for the relators, against the objection of the respondent.

2. The court rejected and excluded proper and legal evidence offered by the respondent.

3. The verdict is against the evidence and the weight of evidence.

4. The verdict is against the law.

5. The verdict is for the relators, when it should be for the respondent.

6. The court erred in giving improper and illegal instructions for the relators, and refusing proper and legal instructions for the respondent.

7. The petition states that the relators appear and prosecute the case at the instance of, and in obedience to, the order of the Bar Association of St. Louis, a corporation under the laws of this state, and there is no evidence that any such corporation is in existence, or that the relators have any right or authority whatever for the proceeding.

8. The bar association is in fact the party plaintiff to the suit, and the judge who tried the cause is a member of said bar association, and, therefore, disqualified to preside at the trial, and this fact only came to the knowledge of the respondent and his counsel within four days of the termination of the trial.

9. One of the jurors, Hospes, was an incompetent juror. He stated on his examination that he was prejudiced against the respondent, and that, if the evidence given at the trial were equal—that is as strong for one side as for the other—he would find against the respondent, in accordance with his preconceived prejudice; and he also stated to another, after being called and before he was accepted and sworn, that the respondent was a "highwayman," and ought to be treated as such; and this fact did not reach respondent until after said juror was sworn.

Tenth. The counsel for relators, Saml. Knox, in making his colosing argument to the jury, and to which respondent had no opportunity for reply, misstated the evidence and misled the jury by misstating the material portions of the evidence of Henry H. Denison, Henry W. Hough, and others, witnesses; as also by misstating the facts as to alleged alterations in the report of respondent's opening argument, and by statements untrue in fact misled and deceived the jury, to the great prejudice of respondent.

"11. Because the judgment and sentence of the court (founded on the verdict of the jury heretofore rendered) is excessive, for the reason that the charges upon which the respondent was found guilty are for matters concerning a breach of professional ethics, and in no sense contain the elements of a criminal offence."

FRANK J. BOWMAN.
WAGNER, DYER & EMMONS,
R. S. McDONALD,
GROVER & ELLIS,
Attys. for Respondent.

And thereafter, on the —— day of March, 1878, the respondent filed his motion in arrest of judgment in words and figures as follows:

Now, at this day, comes the respondent, Frank J. Bowman, by his counsel, and moves the court to arrest the judgment herein for the reasons following, to wit:

"1. The prosecution should have been conducted in the name of the State of Missouri.

2. The prosecution has been conducted in the name of an improper party.

3. There is an improper joinder of several distinct offences in each and every charge in the information contained, and upon which the respondent was found guilty, and upon which the jury rendered a general verdict.

4. The misdemeanors or other offences complained of, in each and every one of the charges upon which the respondent was found

guilty, are charged therein to have been committed more than six months prior to the filing of said charges or information, and, consequently, barred by the statute.

5. In each and every charge upon which the respondent was found guilty he was charged therein with a misdemeanor, and there is no averment that he had been indicted therefor and convicted thereon.

6. The charges or information are otherwise vague, and so uncertain that the same will not support a judgment.

7. In each and every charge upon which the jury found the respondent guilty there is an improper joinder of an indictable with a non-indictable offence."

FRANK J. BOWMAN.
WAGNER, DYER & EMMONS,
R. S. McDONALD,
GROVER & ELLIS,
Attys. for Respondent.

The court having heard and considered said motions, overruled the same, to which action of the court the respondent then and there excepted.

The respondent therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed and sealed and made part of the record.

To the approval and signing of the foregoing bill of exceptions counsel for relators object, for the reason that the court having on the —— day of March, 1878, granted respondent an appeal in this cause, as appears from the record herein, the court was thereby divested of further jurisdiction in said cause, and that the subsequent order of the court setting aside the order granting such appeal, also appearing of record herein, does not authorize the court to sign the bill of exceptions now presented.

Signed and sealed this 30th day of March, A. D. 1878.

WILBUR F. BOYLE, *Judge.* [SEAL.]

STATE OF MISSOURI, } *ss.*
CITY OF ST. LOUIS. }

Frank J. Bowman, being duly sworn, makes oath and says, that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

FRANK J. BOWMAN.

Sworn to and subscribed before me, this thirteenth day of March, A. D. 1878. PHILIP STOCK, *Clerk.*

Know all men by these presents:

That we, Frank J. Bowman, as principal, and Henry L. Sutton and Abial R. Newcomb, as sureties, are held and firmly bound unto Alexander Martin, J. G. Lodge, Edward Kehr, Enos Clarke, and Edmund T. Allen, in the sum of one thousand dollars, for the pay-

ment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at St. Louis, this thirteenth day of March, A. D. 1878. The condition of the above obligation is such, that, whereas, Frank J. Bowman has appealed from the judgment rendered against him of disbarment as attorney in the Circuit Court of St. Louis, and for costs. Now, if said appellant shall prosecute his appeal, with due diligence, to a decision in the St. Louis Court of Appeals, and shall perform such judgment as shall be given by the St. Louis Court of Appeals, or such as the St. Louis Court of Appeals may direct the Circuit Court City of St. Louis to give, and, if the judgment, or any part thereof, be affirmed, will comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against him by the St. Louis Court of Appeals, then this obligation to be void, otherwise to remain in full force.

Approved by the court, March 13, 1878.
Attest: PHILIP STOCK, *Clerk*.

FRANK J. BOWMAN. [SEAL.]

Approved by the court, March 30th, 1878.
PHILIP STOCK, *Clerk*.

HENRY L. SUTTON. [SEAL.]
ABIAL R. NEWCOMB. [SEAL.]
[SEAL.]

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

I, Philip Stock, clerk of the Circuit Court City of St. Louis, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remain on file and of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this twenty-second day of May, A. D. 1878.

[SEAL.] PHILIP STOCK, *Clerk*.

And afterwards, at the October term, A. D. 1878, of the St. Louis Court of Appeals, to wit, on the 11th day of December, 1878, the following assignment of errors was filed in said cause, to wit:

In the St. Louis Court of Appeals. October term, 1878.

IN THE MATTER OF CHARGES AGAINST }
Frank J. Bowman, at the relation }
of Alex. Martin et al. }

And now comes the said respondent, Frank J. Bowman, and says, that in the record and proceedings of the court below, in the above-entitled cause, there is manifest error, and for error said respondent assigns the following, to wit:

1. That said court admitted improper and illegal testimony offered by the relators.

2. That said court rejected proper and legal testimony offered by the respondent.

3. That the court gave to the jury improper and illegal instructions.

4. That the court refused to give to the jury proper and legal instructions offered by the respondent, Frank J. Bowman.

5. That the verdict was against the evidence.

6. That the verdict was against law.

7. That the verdict was against both law and evidence, and against the law under the evidence.

8. That the verdict was against the weight of evidence.

9. That the judgment was rendered in favor of the relators when it should have been rendered for the respondent.

That said court overruled the motion for a new trial, made by respondent.

That said court overruled the motion in arrest of judgment, made by respondent.

That the said count ovreruled the challenge for cause, made by respondent, an incompetent juror, Richard Hospes.

That the proceedings had in this cause in the Circuit Court of the City of St. Louis, where the case was originally tried, were in violation of the 30th section of the 2nd article of the constitution of the State of Missouri, which provides "that no person shall be deprived of life, liberty, or property without due process of law."

FRANK J. BOWMAN.

And now come the respondents, Alex. Martin et al., and, for joinder in error, say there is no error in the record and proceedings of said circuit court in said cause, as assigned by said appellant.

CHESTER H. KRUM,
JOHN W. DRYDEN,
Attys. for said respondents, relators.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

MONDAY, *February 3rd*, 1879.

IN THE MATTER OF CHARGES AGAINST FRANK J. BOWMAN, APPELLANT. } 1108.

Now, at this day, this cause coming on for hearing, come the said parties by their attorneys, and the said appellant suggests to the court that there is a diminution of the record herein. And the court having heard and fully considered the said appellant's motion for a writ of certiorari to amend said record, doth overrule the same.

* * * * * * * * *

And afterwards, at the October term of said court, to wit, on the 23d day of January, A. D. 1879, the following stipulation amending record was filed in said cause, to wit:

Stipulation amending record.

In the St. Louis Court of Appeals, October term, 1878.

In the matter of Frank J. Bowman, an attorney at law, appellant, against whom charges were exhibited by Alex. Martin & al., relators, respondents.	No. 1108. Appeal from Circuit Court for City of St. Louis.

In the above-entitled cause it is hereby stipulated and agreed by and between the parties thereto, by their several attorneys, that the transcript of the record of the said circuit court heretofore filed herein be, and the same is hereby, amended in the following particulars, to wit: By inserting after the words "also letter from Lewis to Madill, dated Dec. 22, '76, as follows," on page 429 of said transcript, the following:

"St. Louis, *Dec.* 22, 1876.

"Hon. Geo. A. Madill, *City.*

"Dr. Sir: In the matter of a receiver for the St. Louis Mutual Life Insurance Co., I will leave the matter in the hands of yourself and Messrs. Davis & Smith. As to the allowing a receiver I leave the matter entirely in your hands, consulting the Columbia Life, hoping of course that you will look to the interest of the St. Louis Mutual Life. Yours truly,

"W. G. LEWIS, *President.*"

Also, by striking out after the words "and also by witness Bent, commencing they have promised if I so demand, &c. (as follows)," on page 431 all the words beginning "Monday, Feb. 12, 1877," and ending with "which Mr. Bowman had given him, viz;" and by striking out all on said page that follows after the words "incidental expenses," and reading thus: "A true copy of the minutes of above date. W. C. Bean, secretary of board of receivers St. Louis Mutual Life Insurance Company."

Also by adding on page 745, after the last words thereon, "as follows," the further words and figures following, to wit:

Laclede Bircher Hotel, R. Bircher, Proprietor,
Chestnut, Fifth, and Sixth Streets,

Mr. Bryant. St Louis, *March* 27, 1877.

Dear Sir: Not being able to see Mr. Hough to-day, I have sent him a note, saying that I was convinced that there was a general misunderstanding all around, and asking him to meet you and myself at 9.30 A. M. to-morrow, then we can advise as to the what is best; under advice of my physician I cannot leave my room again to-night.

Respectfully, F. G. BOWMAN.

Also, by adding by insertion on page 529, after the words superintendent, &c., the further words, as follows: The relators then

offered to prove, and the respondent, by his counsel, thereupon admitted in open court, he, the respondent, at the several times mentioned in the charges, was an attorney at law, duly licensed to practice in this state and enrolled as such in this court.

Also, by adding by insertion on page 465 of said record, after the words "made and entered into this," in the tenth line of this page, the word "seventeenth."

Also, by adding, on page 462 of said transcript, as follows: Of the foregoing deposition of J. F. Houghton, all those parts thereof which consist of interrogatories Nos. 69, 70, 71, and 72, and the answers thereto, respectively, as found on page 460 of this record, and of interrogatory No. 82, and the answer of witness thereto, as found on page 461 of this record, were, on the trial of said cause in the circuit court, objected to by the relators, and the objection was, by the court, sustained, and said parts were not read to the jury.

Also, by adding, on page 527 of said transcript, as follows: "Of the foregoing deposition of J. C. Carroll, the following parts were, upon the objection of the relators thereto made, excluded and not read to the jury upon the trial, to wit:

(1) All that part contained in the 1st cross-interrogatory and answer thereto, on page 507 of this transcript.

(2) All that part contained in the 5th cross-interrogatory and the answer thereto, found on page 508 of this transcript.

(3) All that part contained in the 16th and 17th cross-interrogatories and the several answers thereto, found on page 509 of this transcript.

(4) All that part contained in interrogatories 135, 136, and 137, and the several answers thereto, as found on page 518 of this transcript.

(5) All that part contained in interrogatory 142 and the answer thereto, as found on page 519."

Also, by adding, on page 657 of the transcript, as follows: "Of the foregoing deposition of H. D. McKay, the following parts, upon the objections of the relators thereto made, were excluded and not read to the jury, to wit:

(1) All that part beginning in the 28th line of page 559 of this transcript, with the words "(Q) State whether Mr. Bowman," and ending, in 3rd line of page 560, with "(A) Not to my knowledge."

(2) All that part beginning in the 12th line of page 560, with the words "What is the extent of the services," and ending, on page 561, with the words "(A) Never, to my knowledge."

(3) All that part beginning on page 561 with the words "From your knowledge," and ending, on the same page, with the words "as irrelevant and incompetent."

(4) All that part beginning on page 562 with the words "(Q) Will you state whether re-insurance," and ending with the words, on page 564, "if not the thing was to end."

(5) All that part beginning on page 566 of the transcript with

the words "(Q) Were the charges thus spoken of," and ending, on page 568, with the words "and thus increase its business."

(6) All that part beginning on page 569 of this transcript with the words "(Q) I will ask you what effect," and ending, on page 570, with the words "being decreased that much."

(7) All that part beginning on page 570 of this transcript with the words "State, if you have any recollection," and ending, on page 571, with the words "they were then prevailing on."

(8) All that part beginning on page 571 of this transcript with the words "will you state what, if any," and ending with the words "he had not much time then," on the same page.

(9) All that part beginning on page 573 of this transcript, with the words "under Mr. Bowman's employment," and ending on the 574 page with the words "(Q) Whom did you refer to by her? (A) Mr. Bryant."

(10) All that part beginning on page 641 with the words "(Q) Do you know from any conversations," and ending on page 642 of this transcript with the words "informed of that fact."

(11) All that part beginning on page 642 of this transcript with the words "(Q.) State whether, in your first interview," and ending on page 657 with the words "private matters public."

(12) All that part beginning on page 654 of this transcript with the words "(Q) State whether anxiety was manifested," and ending on page 655 with the words "that was his talk."

Also, by adding on said page 657 the following, to wit: "Also, of the foregoing depositions of H. D. McKay, the following parts were, upon the objections of the respondents made to the same, excluded, and not read to the jury, to wit:

(1) All that part beginning on page 596 of this transcript with the words "(Q) From your knowledge as an attorney," and ending on page 600 of this transcript with the words "for him to attempt it if he knew that."

(2) All that part beginning on page 615 of this transcript with the words "(Q) Do you think it consistent with?" and ending on page 618, at words "what his judgment was of the course for him to pursue."

(3) All that part beginning on page 624 of this transcript with the words "(Q) There were more charges made against," and ending on same page with words "got the worst of it."

(4) All that part beginning on page 632 of this transcript with the words "(Q) As a member of the bar," and ending on page 633 with the words "issue of fact in the case."

Also, by adding on page 233 of the said transcript, as follows:

The following is a copy of an order made by said court in said cause on the 27th day of February, 1877, to wit:

CELSUS PRICE, SUPERINTENDENT OF INSURANCE Department,
vs.
COLUMBIA LIFE INSURANCE COMPANY.

On motion of plaintiff, F. J. Bowman and Chandler & Young are hereby appointed attorneys for said plaintiff in this cause."

Also, by adding on page 268, by insertion, the following: "The following order was made by said circuit court in said cause on the 8th day of December, A. D. 1878, to wit:

CELSUS PRICE, SUPERINTENDENT OF THE INSURANCE Department of Missouri,
vs.
ST. LOUIS MUTUAL LIFE INSURANCE COMPANY.

It is further ordered that Frank J. Bowman, esq., be appointed as attorney to assist the plaintiff in these proceedings.

JOHN W. DRYDEN,
Attorney for said Relators.
HIRAM J. GROVER,
Attorney for Frank J. Bowman.

And afterwards, at the same [*term*] of said court, to wit, the 3d day of February, 1879, the following further stipulation amending record was filed in said cause, to wit:

Stipulation amending record.

In the St. Louis Court of Appeals. October term, 1878.

IN THE MATTER OF FRANK J. Bowman, an attorney at law, Appellant. } No. 1108. Appeal from Circuit Court for City of St. Louis.

In the above-entitled cause it is hereby stipulated and agreed by and between the parties thereto, by their several attorneys, that the transcript of the record of the said circuit court heretofore filed herein be, and the same is hereby, amended in the following particulars, to wit, by inserting after the words "as follows," on page 837 of said transcript, the following:

ST. LOUIS, *Feb.* 18, 1878.

To Hon. W. F. Boyle, judge of the St. Louis Circuit Court.

We, the jury in the case of Alex. Martin et al. vs. Frank J. Bowman, respectfully petition the court to make the penalty as light as possible in view of the many mitigating circumstances.

E. O. STANARD. DAVID NICHOLSON.
JOHN B. GRAY. WM. SEUTER.
F. B. CHAMBELAIN. C. L. THOMPSON.
RICHARD HOSPES. J. K. CUMMINGS.
MARTIN W. WILLIS. H. D. HAYDELL.
BEN. MAY.

JOHN W. DRYDEN,
Atty. for Relators.
HIRAM J. GROVER,
Atty. for Appellant.

And afterwards, at the October term, A. D. 1878, the following judgment was rendered in said cause, to wit:

TUESDAY, *December 4th*, 1878.

IN THE MATTER OF THE CHARGES AGAINST FRANK J. Bowman, Attorney and Counselor at Law.

Judgment.

(1108) FRANK J. BOWMAN, APPELLANT, *vs.* ALEXANDER MARTIN, EDWARD T. ALLEN, CHAS. Clark, Joseph G. Lodge, and Edward C. Kehr, Committee of Prosecution of the Bar Association of St. Louis (a corporation), Respondents. } Appeal from the St. Louis Circuit Court.

Now again come the parties aforesaid by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis Circuit Court be in all things affirmed and stand in full force and effect, and that the said respondents recover of the said appellant their costs and charges herein expended, and have execution therefor. Opinion filed.

And which said opinion is in the words and figures following, to wit:

Opinion.

On 7th of November, 1877, five members of the St. Louis bar, composing the committee of prosecution of the Bar Association of St. Louis, acting, as they allege, at the instance of the bar association, an incorporated body, exhibited in the St. Louis Circuit Court charges against Frank J. Bowman, a practicing member of the St. Louis bar. These proceedings were under the statute, which provides (Wag., 198, § 6) that "any attorney who shall be guilty of * * * any malpractice, deceit, or misdemeanor in his professional capacity, may be removed or suspended from practice, on charges exhibited and proceedings thereon had," as provided in the act regarding attorneys at law. The charges are eighteen in number. The appellant waived a citation and pleaded not guilty. On the application of appellant a special jury was summoned; and after a protracted trial, lasting a month, the appellant was found not guilty of charges 4, 5, and 18, and guilty of all the other charges except charge 3, which was withdrawn. Judgment was entered that defendant's name be stricken from the rolls, and that he be removed from the practice in this state. A motion in arrest and a motion for a new trial having been overruled, the defendant brings the cause here by appeal.

It is contended by the appellant that the bar association, being a private corporation, has no authority to set on foot proceedings of this nature; that the proceeding is essentially criminal; that the

state grants the franchise of practicing law; that attorneys are *quasi* public officers, and under the control of the state, and that proceedings to revoke the privilege can be inaugurated by the state alone, and through its prosecuting officers, and only in the name of the state.

I. The proceeding to disbar an attorney is not in the nature of a civil action, neither is it a criminal proceeding. It is a proceeding *sui generis*. Its object is not the punishment of an offender, but the protection of the court; and if the removal of the attorney from his honorable, and perhaps lucrative, position as an officer of the court, is of disastrous consequences to him, that is a merely incidental matter.

Attorneys are officers of the court. By virtue of their office, great confidence must necessarily be reposed in them, and if they are unworthy of that confidence a serious impediment is interposed to the administration of justice. Secrets involving all that makes life worth having are necessarily confided to them by their clients, in implicit reliance upon their professional honor. In the same confidence they have the freest access to all the records of the court of which they are members. They can, in any action, by their word, irrevocably bind the client that they represent. The bar, more than any other profession, is wholly dependent upon the reputation of its members for honor and integrity; and, after the bench, the members of the bar have the greatest interest in maintaining the honor of the profession, and in purging it of unworthy members.

The power to appoint attorneys was at a very early date conferred upon the courts in England. By 4 Hen. iv., c. 18, it is provided that, "for sundry damages and mischiefs that have ensued before this time to divers persons of the realm by a great number of attorneys, ignorant and not learned in the law, as they were wont to be before this time, it is ordained and established that all the attorneys shall be examined by the justices, and by their discretions their names put in the roll; and they that be good and virtuous shall be received and sworn well and truly to serve in their offices." Since that date the power of appointing attorneys has been constantly regulated and controlled by statute. It is a power that is not inherent in the courts, but which is, with great propriety, entrusted to them, and which, in this state, and, we believe, in most of the states of the Union, is entrusted exclusively to them. The right to remove attorneys, however, is an inherent right of the courts; it is not derived from the legislature, and legislative enactments in regard to the removal of attorneys are merely in aid of the common law. The earliest statute on the subject is that of Westminster 1, 3 Edwd. i., c. 29, which provides that, "if any sergeant, pleader, or other do any manner of deceit or collusion in the king's court, or consent unto it in the deceit of the court, or to beguile the court or the party, and be thereof attainted, he shall be

imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man." These practices, says Coke, (2 Inst., 1, 213,) were against the common law, and, therefore, this act was made in affirmance of the common law. It is held that the courts, by their inherent power, may disbar for other causes than those specified in the statute, which is not to be construed as an enabling act, or as restrictive of the general power of the court over its officers. The doctrine must be regarded as well settled that, without the statutory provision, the right to control their officers, and to determine who shall appear before them in the capacity of attorneys, is incidental to all common-law courts of general jurisdiction, as it is also necessary to the respectability of the profession.—(Mills' Case, 1 Mich., 392; 1 How. (Miss.), 303, *ex-parte* Brown; Perry's Case, 36 N. Y., 651; State vs. Chapman, 11 Ohio, 430; Secomb's Case, 19 How. (U. S.), 9; Beene v. State, 22 Ark., 149; Randall's Case, 11 All., 472; Rice v. Comw'th, 18 B. Monroe, 482.)

It is the duty of the court to direct proceedings to be instituted against any attorney practicing at its bar as to whom it shall have knowledge that he has been grossly faithless to his trust, and has violated his oath by misdemeaning himself in office in any matter before the court; and it is especially the duty of members of the bar to institute proceedings against any attorney who brings discredit upon the profession by highly improper professional conduct. They have a deep stake in the character of the profession and are vitally concerned in preventing it from falling in public estimation by the misconduct of its members.

That the practice has been, both in England and in this country, to proceed by rule on the attorney to show cause why he should not be disbarred, that this rule is issued *proprio motu*; or granted at the instance of a member or of members of the bar, and that in the absence of statutory provisions in the matter, the proceeding was peculiarly in the control of the court, and to be deemed to be taken according to the course of the common law, appears from the adjudged cases in England and America. Those cited below do not all bear upon this point, though many of them do. They are selected from a mass of authorities to which we are referred in the learned briefs of counsel on either side, as illustrating the general doctrine on this subject.—(*Ex-parte* Brownsall, Cowper, 829; *Re* Blake, 3 Ell. & Ell., 34; *Re* Blank, 24 E. L. & E., 399; 3 Wormer & Thul. & C., 636; *Re* Thompson, 13 C. B. N. S., 288; *Ex-parte* Bradley, 7 Wall., 364; *Re* Peyton, 12 Kansas; Beene v. State, 22 Ark.; State v. Kirk, 12 Fla., 278; Penobscott Bar v. Kimball, 64 Me., 146; Randall's Case, 11 Allen, 472; Dickens' Case, 67 Penn., 169; Bryant's Case, 24 N. H., 158; Austin's Case, 5 Rawle, 191; Cooper's Case, 22 N. Y., 67; Smith v. Tennessee, 1 Yerg., 228.)

In some states, as Alabama and Texas, the statute requires that the prosecution shall be in the name of the state. But generally it

is not so, and it has never been so in Missouri. The style of the case—as State v. John Doe—is not to be taken as showing that the proceeding was actually in the name of the state. Cases are to be found so entitled, in which the proceeding was purely *ex parte*, as Strother v. The State.—(1 Mo., 772.) The style of the case depends often upon the endorsement placed upon the papers by the clerk. We observe that the index of cases subjoined to a recent useful treatise on the subject of attorneys (Weeks' Att. & Courts) contains, in a list of two thousand, only about thirty cases entitled in the name of the state; and amongst these are Missouri cases (36 Mo., 256; 1 Mo., 772) in which the attorney was summarily disbarred by the court of its own motion.

We are referred by appellant to Turner v. Commonwealth (2 Metc., Ky., 6) in support of the doctrine that a proceeding to disbar must be in the name of the state. But that case and other cases cited go no further than to decide that they may be properly so commenced. The information in that case was filed by a private individual; and the court thereupon directed the district attorney, who was probably an officer of the court, to conduct proceedings in the name of the state. Under similar circumstances, this might be a proper course in Missouri. For the Kentucky practice on the subject, the case cited refers to Rice v. Commonwealth, (18 B. Monroe, 483,) where it is said that, if the court have knowledge of the existence of official misconduct on the part of any of its officers, it has the power, and it is the duty of the court to institute appropriate proceedings against the offender; and that the official misconduct of an attorney may be inquired into in a summary way by the court, and the name of the attorney, if guilty of misconduct, stricken off the roll; and reference is made to the common-law mode of procedure in such case, (Bacon Abr. 1, p. 306,) which is said to have been followed in the case at bar.

Our first enactment on the subject is the territorial law of 1804, (1 Ter. Laws, 49,) which provides, that if the judges detect any malpractice in any attorney, from their own observation, or if complaint in writing be made of any malpractice, the offending party may be summoned by a rule to show cause why an information shall not be lodged against him; and if the information is ordered, and the attorney found guilty, the judges may suspend or revoke his license as they may deem proper. The next law on the subject, is that of 18 Dec., 1824, (Rev. Stat., 1825, p. 158,) which provided that the Supreme Court might strike from the rolls any attorney convicted of felony, improperly retaining his clients' money, malpractice in office, gross ignorance, or neglect, or contempt. The circuit courts, under this act, might suspend any attorney guilty of misconduct, which, in the opinion of the court, would justify his being stricken from the rolls; the cause of the suspension was then certified to the Supreme Court, before which the attorney might appear; and, if he failed to appear, or failed to show good cause

against the order, the Supreme Court proceeded to make such order as the facts set forth in the order of the circuit court might require. Under this law the Supreme Court held, State v. Foreman, 3 Mo., 412, that where the circuit court suspended an attorney for causes not enumerated in the statute, the suspension should be set aside. Judge McBride dissented, holding that, as causes of dismissal exist independent of the statute, they may be inquired into beyond its provisions.

In the subsequent year (1835), our present statute was passed. Under this statute, any attorney may be removed or suspended from practice for felony or infamous crime, for retaining his clients' money, or for malpractice, deceit, or misdemeanor in his professional capacity. It is contended by appellant, that the word "misdemeanor," *as* here used in its technical sense, as meaning any offence punishable by fine, or imprisonment in a county jail; and that there can be no conviction for any professional misdemeanor which is not an offence already punishable by law, and declared to be a misdemeanor by the statute.

It is manifest that this is not the meaning of the law. The word "misdemeanor" is used in its ordinary sense, and as the equivalent of misbehavior. The language of the old colonial act in Pennsylvania, passed in 1722, is "attorneys, if they misbehave, shall be liable to suspension."—(Austin's case, 5 Rawle.) The three words of our act are used together, as in the New York law, which provides that any counselor may be suspended who is "guilty of any deceit, malpractice, or misdemeanor." The words in "his professional capacity," do not occur in the New York statute. It could not, of course, be contended that an attorney in New York could be suspended for not complying with some city ordinance, non-compliance with which is made a misdemeanor. Under laws which provide for suspending an attorney for "misdemeanor," it has been held that an attorney might be suspended who was crowding the calendar with libel suits in his own favor, and who was seeking his own clients, and when defeated, recommencing the actions in other counties instead of taking an appeal. An attorney in New York was disbarred because his credibility was destroyed; his general character had become bad, and he was thus misbehaving himself as an attorney.—(1 N. Y. Rev. Stat., 1869, p. 99, § 24; *Re* John Perry, 36 N. Y., 652.) In Pennsylvania an attorney was disbarred for endeavoring to make opposing counsel drunk.—(Dickens case, 67 Penn.) And in Illinois, for advertising as a divorce lawyer.—(Goodrich case, 79 Ill.) These acts are, none of them misdemeanors, we presume, under the statutes of the states in which the misbehavior occurred. So, Judge Holmes in the Garesche case, 36 Mo., 258, speaking of the common-law rule, says: "If guilty of deceit, collusion, or any misdemeanor in practice, they were liable to be stricken from the rolls." An attorney may be disbarred on a showing that his character for truth and veracity is so notoriously bad that he is

not to be believed on oath. But a habit of lying is no statutory misdemeanor.—(In *re* Mills, 1 Mich., 392.) The attorney holds his office for life or during good behavior, "*quamdin se bene gesserit*," "so long as he shall demean himself well;" and when he ceases to demean himself well, he is guilty of misdemeanor in his professional capacity; and this is the obvious meaning of the word as used in section 6 of our statute.

Our statute does not direct that the proceeding to disbar or suspend an attorney shall be in the name of the state. Doubtless such a proceeding might be commenced by the prosecuting attorney; and he might, in that case, perhaps, use the name of the state. A private individual has no authority to do so. The manner of exhibiting charges is not provided for by the statute. No technical description of the act complained of can be required. It is enough that facts are clearly alleged that constitute professional misbehavior. Those facts, if put in issue, will be tried. One guilty of malpractice, deceit, or misdemeanor in his professional capacity, is declared by statute to be unfit to practice law. Of this charge, he must have notice sufficiently definite; he must have an opportunity to appear and defend himself. When the matter charged is not indictable, a trial of the facts is had by jury, if the accused desire a jury. If the facts be found true, the court then pronounces sentence of removal or suspension, according to the nature of the facts found.—(Wag., 199, §§ 15, 16.) There is no arraignment, no necessity for the presence of the accused, and no punishment. The fact being that the accused is found unworthy to practice law, sentence is passed of his removal for a greater or lesser time from the bar. An attorney who had lost his wits might be so removed as unfit to practice. It is absurd to say that his removal would be a punishment. The statute is not penal in its nature, since judgment of removal is not properly considered as a punishment (Randall's case, 11 All., 480), nor is there anything technical in the proceeding under it. Under the Statute of Attorneys, the court may proceed, *ex parte*, if the attorney neglects or declines to appear, but the code of criminal practice prohibits conviction of an offence where the defendant is not present. An examination of the provisions of the act, which are few and simple, shows at once that the legislature did not intend that the proceeding to disbar an attorney should be a criminal proceeding on the part of the state, or that it must be conducted by state officers, or that it should be governed by the rules of criminal practice. As we have said, it is a proceeding apart, to be governed by its own rules, and where the statute is silent, the ordinary common-law practice in such cases may be adopted. No formal or technical description of the act complained of is deemed requisite to the validity of such a proceeding, nor is it necessary to the validity of the judgment that it be founded on due process of law as that term is used in the Bill of Rights. The offender is not necessarily charged with a crime. The object of the proceeding is to deter-

mine whether he has become unfit to practice law, and to remove him from the bar if that fact is properly established.—(Randall's case, 11 All., Mass., 479.)

If the end to be obtained by removal were punishment, it would follow that one convicted of felony or misdemeanor might, if an attorney, be punished twice for the same offence. But it is not so; and in Brounsall's case (Cowp., 289) it was held by Lord Mansfield that the fact that one had been branded as a thief, was no ground for not removing him from the bar.

The objection that the proceeding was not in its nature criminal, and that as such it should have been in the name of the state, is insisted upon here with great earnestness; but in the trial court there was no demurrer to the complaint, and no objection whatever was raised to the form of the proceeding until the cause had been tried upon its merits and a result reached adverse to appellant. We are satisfied that the objection is untenable.

2. It is contended that the judge who presided at the trial was incompetent to sit, as being an honorary member of the bar association, whose committee exhibited the charges. But it appears that under the rules of the association the learned judge is not liable to assessment for expenses. This objection, like the last, was not made until the close of the trial. There is nothing in it.

3. One of the jurors, Richard Hospes, when examined by appellant's counsel on his *voir-dire*, said that he had expressed an opinion in regard to the case outside of the court. That it would require evidence to remove that impression. He was then challenged by defendant for cause. On examination by counsel for relators, he then said that his mind was in such a condition that he thought he could give defendant a fair and impartial trial; that testimony could remove the impression he had formed; that he had spoken to an attorney, a friend, about the case, besides what he had read; that he did not think, if anything would come up on the trial that would prove the contrary of what he had been told, he would decide the other way; and that if the testimony were fairly balanced he had a prejudice that would determine him—which way his prejudice was he was not asked, and he did not say. The court, then, overruled the objection, and to this no exception was taken at the time. There was nothing in this to show that the juror was under strong impressions which would close his mind to evidence. The juror swore that his judgment would not be influenced by the talk he had heard and the newspapers he had read. The trial judge had the juror before him, and witnessed his manner, and was therefore better qualified than we are to decide whether he could honestly do his duty. The acceptance of this juror would be no ground for reversing the judgment had the point been properly saved, which was not the case.—(Eckert v. Transfer Co., 2 Mo. App., 41; City v. Ensworth, 65 Mo., 628.)

4. In support of his motion for a new trial, defendant filed an

affidavit of one Wells to the effect that while sitting beside Hospes in the court-room, waiting to be examined with others summoned as special jurors, he had a conversation with Hospes, in which Hospes, speaking of defendant, said, "I look upon Bowman as no better than a highway robber." Hospes then expressed his delight that the proceedings against Bowman had been instituted, and said: "There are two or three others that I know of that ought to be in the same boat. There is one of them now," pointing to a well-known attorney. The affiant said he was a stranger to Hospes at the time. A counter-affidavit of Hospes was filed, in which he says that what he did say was, that he had read things in the newspapers; amongst other things, certain testimony in a proceeding before Judge Jones; and if the matter in these publications were true, then affiant must regard Bowman as no better than a highway robber; that his statement was hypothetical, and that he had expressed no pleasure at the institution of the proceedings. The presumption is in favor of the juror. It is manifest that these affidavits ought not to be allowed to overthrow the verdict. Other points made by appellant will be more conveniently noticed after we have examined the charges, the question whether there was any evidence to support them, and the instructions given and refused.

5. The first and second charges relate to the same transaction, and are to the effect that in July and August, 1875, whilst defendant was a co-partner with B. A. Hill in the practice of law, the firm of Hill & Bowman was employed by the superintendant of the insurance department of the state to give him an opinion as to a request by the St. Louis Life Insurance Company to change certain securities then in the custody of the department; that Hill advised, in writing, against the change; that Bowman then willfully undertook, in consideration of $900, afterwards paid him by the company, to procure the change of securities, and, under this employment, willfully continued the relation of his firm to the department as its attorneys in this matter, and procured from Hill a second written opinion modifying the first; and that by means of this double relation of Bowman to the company and to the department, and his acts in the interest of the company, the change of securities was effected; that Bowman, on the 4th of August, 1875, whilst the attorney of the department in this matter, became the attorney of the company designing the change, and acted for and advised for both sides, when the interest and duties of the insurance company and of the department were adverse.

As to these charges, there is evidence tending to show that the St. Louis Life Insurance Company had re-insured four insurance companies, and had deposited with the insurance department securities of the nominal value of $400,000 belonging to these companies. Whilst Blair was superintendent of insurance the St. Louis life proposed to withdraw these securities, and to substitute for them notes to a like amount, to be secured by a deed of trust on the build-

ing said to be owned by the company, and in which it transacted its business, which building was valued at about $800,000. The proposition was rejected by Blair, but a new proposition to the same effect was made, and was pending when Blair died, on July 8th, 1875. On July 9th defendant left St. Louis for Lake Superior to spend the summer.

On the 22d of July, 1875, Price succeeded Blair as superintendent of insurance, and on July 31st Price consulted Hill in writing as to the legality of the proposed change of securities. Britton, the vice-president of the St. Louis life, had previously consulted Bowman as to the proposed change, and had been advised by him that it could be legally made. Davis and Smith were the regular attorneys of the company, and on July 30th Bowman, then at Sioux River, eight miles from Bayfield, and eighty miles from the nearest telegraph station, Duluth, received a telegram with the single word "come." This telegram was sent by Davis at the request of Britton. Britton says that he had learned that Hill had given, or would give, an opinion adverse to the proposed change, and he wanted Bowman back that he might correct Hill's opinion. Bowman, in obedience to the telegram, went to Duluth, and inquired of Davis by telegram what he was wanted for. He received the information from Davis and proceeded to St. Louis, which place he reached on August 4th. On August 2d Hill had given an opinion unfavorable to the change. On reaching St. Louis, Bowman stated to Price that he could not act for the insurance department in the matter, as he had been formerly employed by the company. He also says that he pointed out to Price errors of fact in the statement on which Hill's opinion was based. Bowman then conferred with Britton, and with Davis and Smith, and after receiving their views he had a conference with Hill. Hill had no intimation from Bowman that they could not act for the department, or that Bowman was acting for the insurance company; and he was induced by the representations and arguments of Bowman to give a written opinion of 5th August modifying his former one. For these opinions Hill charged either $50 or $100, marking the amount on the envelope of the letter. On the 9th August the securities were changed, a favorable opinion having been meanwhile obtained by the department of Sharp and Broadhead, who were consulted on the recommendation of Mr. Bowman, as he says. But Price says he does not know whether he wrote to Sharp and Broadhead after or before he received Hill's opinion. On the same day Bowman was paid $900 by the company for his service in the matter, and returned to the place on Lake Superior where he had been fishing. In the following year Bowman told Hill to enter on the books of the firm, "Received from insurance case, for advice to insurance department, $500." But it was not until the year succeeding that, that Hill learned the facts. Afterwards, in adjusting a fee with the Columbia life, which was the St. Louis life under a change of name, Bow-

man exacted twenty-five hundred dollars as a further fee for his services in effecting the change of securities, requiring that the voucher should be so drawn as that it should appear that the money was paid him for services to the company in regard to its change of charter.

It is contended by appellant that in this matter, the insurance department acted on the opinion of Sharp and Broadhead, and not on that of Mr. Hill; that the change of securities was advantageous to the creditors of the insurance company, and that it was a legal and prudent operation, and that the security substituted was more valuable than those removed. These are matters as to all of which appellant thinks that there is room for controversy to say the least. It is, nevertheless, true that there was evidence to warrant the instructions given by the court as to these charges at the instance of relators.

These instruction were substantially as follows. They are necessarily given in an abbreviated form:

If the jury believe from the evidence that Hill and Bowman were, about 31st July, 1875, copartners engaged in practicing law in St. Louis; that the firm at that date was consulted by letter by the superintendent of insurance as to the change of securities; that Hill undertook the employment, and after consultation and examination at the office of the department, gave on behalf of the firm, the written opinion of 2d August; that Bowman returned to St. Louis on 4th August, and was informed of Hill's opinion, and undertook, nevertheless, to act for the St. Louis Insurance Company in the matter about which the opinion was given, and was afterwards paid for such services; and, in the course of rendering them, consulted and advised with his partner in regard to the change of securities without informing him that he was acting for the St. Louis Insurance Company; that Hill was induced by his consultations with Bowman to render the second opinion of 5th August on behalf of Hill and Bowman; and that that opinion was delivered to Bowman for the department by Hill, and by Bowman delivered to the department in discharge of legal services requested by the department of said firm by its letter of 31st July; and that the matter in controversy between the department and the insurance company involved the legality of the change of securities involved in said letter, then they must find against the defendant on the first charge.

"If Bowman represented both sides, as stated in the last instruction, then the fact, if found, that the superintendent knew of this double employment, does not excuse it.

"If Bowman represented both sides, as before stated, for the purpose of inducing the change of securities, they must find against him on charge one, even though they should find that the change was finally accomplished by other agencies.

"If Bowman, on the 4th August, 1875, was attorney of the insurance department in respect to the change of securities in the custody

of the department, which change was solicited by the insurance company, and being attorney of the department became attorney of the company in regard to this matter; and, whilst attorney of both sides, counseled both sides in his own name or that of his firm, and the interests of the department and the company were adverse, the verdict should be against defendant.

"If Bowman was Hill's partner, and the firm was asked for its legal opinion by the letter of 31st July, in Bowman's absence, and Hill accepted the employment and gave the advice requested for the firm, and Bowman, on his return to St. Louis, before acting for the company, was informed of the relation of his firm to the department fixed by the letters of his partner and of the department, then Bowman, by virtue of these letters and the action of Hill, became attorney of the department in the matter of the change of securities, and after this knowledge and employment could not lawfully become the attorney of the company in the matter.

"If the matter in controversy involved the change of securities, and this change was solicited by the insurance company, the department had the right, in its discretion, to retain the securities and deny the change, and the interests were adverse."

For the defendant the court instructed the jury that the relators must show to the satisfaction of the jury that the defendant, or his firm, was, at the same time and in the same matter, attorney for the company and the department; and that, if defendant knew nothing about his firm having been consulted by the *the* department until after Hill's opinion was given, and had previously accepted employment from the company in regard to the matter, and on his return to the city notified the department that neither he, nor his firm, could act for the department in the matter, and if defendant thenceforward acted only for the company in the matter, then they should find for defendant on the first charge; and, in order to find defendant guilty on the second charge, it must appear that Bowman was, to his knowledge, in the employ of the department on the 4th of August as its attorney, and, while such, became the attorney of the company, and was at one and the same time attorney of both in a matter in which their interests were separate and adverse in regard to the change of securities.

These instructions were based upon the testimony, and seem to have presented the questions involved in these charges very fairly to the jury.

Instructions asked by defendant on the theory that if defendant informed Price that Bowman, or that Hill & Bowman, could not act for the department in the matter, and then acted for the company with Price's knowledge, and that if Price was told by Bowman to get other counsel, and did so, the defendant was guilty of no wrong, were properly refused.

6. The 6th, 7th, 8th, 9th, 10th, and 11th charges may be considered together. They set up malpractice and deceit by defendant in his professional capacity, on the following alleged state of facts:

That on the 1st of October, 1876, appellant entered into an obligation, in writing, with the Life Association of America, a corporation carrying on a life insurance business in Missouri, by which he agreed to act as its attorney in all matters concerning its business for one year from date in consideration of $7,000 paid him by that corporation; that, during this employment, defendant entered into the employment of Price, superintendent of the insurance department of Missouri, as his legal adviser, and, in his behalf, prosecuted suits against insurance companies in which the Life Association of America had an interest, and this in violation of the statute (Wag. Stat., ch. 76, § 7), which provides that "the superintendent of insurance shall not employ in any capacity whatever, to perform any service, any person who is an officer, agent, or employee of any insurance company or association."

One of these suits which defendant is alleged to have willfully instituted and carried on for the plaintiff, was that of Price, Superintendent of the Insurance Department, v. The St. Louis Mutual Life Insurance Co., in which it is alleged that the interests of plaintiff were adverse to those of the life association, because the life association owned eight-tenths of the stock of, and controlled the Columbia Life Insurance Company, and had acquired its assets. These assets came from the Mutual life; the right to transfer them was disputed, and the life association might, therefore, be called upon to return them to the creditors of the Mutual life. The object of the proceeding of the superintendent was to wind up the Mutual life, and the allegation is, further, that whilst attorney of Price in this suit, defendant entered into a collusive arrangement with the officers of the Mutual life and the Life Association of America, to carry on this suit in the interests of the life association, and that he did so carry it on till 1st of May, 1877. The other suit alleged to have been carried on by appellant for the superintendent of insurance, is that of Price v. Columbia Life Insurance Company, the object of which was to wind up that company as insolvent. It is alleged that, as the life association owned the majority of the stock, controlled the policy, and was liable for the property of the Columbia, appellant could not faithfully discharge his duty to the insurance department in this proceeding whilst attorney for the life association, and that every step taken in this suit was malpractice, deceit, and misdemeanor in his professional capacity; and that, whilst attorney for the insurance department in this proceeding, appellant entered into a collusive arrangement with the officers of the life association, who practically owned, and who really controlled the Columbia, whereby he agreed to prosecute this suit in obedience to the wishes of the officers of the life association, and to dismiss it at their request; and that he submitted the petition in their suit to them, and gave them a blank order of dismissal signed by him. It is further charged that appellant, whilst in the employ of the life association, willfully acted as attorney of the receivers of the St. Louis Mutual

in proceeding against the Columbia, where the life association was interested in the suit adversely to plaintiffs, as being the owner of the stock of the Columbia and contingently liable for its assets.

Evidence was introduced by relators tending to show that a policy-holder sued Price, superintendent of insurance, and the Columbia company in September, 1876, charging that there had been collusion in the change of securities, and that this change was made by the Columbia under the name of the St. Louis life. Some of the bondsmen of Price came to the office of the life association and spoke of this suit, and seemed to be uneasy about it. And the rumors reached the life association that the department wanted to proceed against the company to show vigor in the department, and they feared that an effort would be made to put the Columbia in the hands of a receiver. An attorney was employed by Price to defend him in this suit. This attorney was paid by the Columbia. A few days after this suit was brought, the insurance department demanded of the Columbia a special statement. This was followed by correspondence between the department and the Columbia as to irregularities alleged in the affairs of the company. The superintendent was advised by counsel that a statement, either special or annual, must be made by the company before the department could institute proceedings.

In the early part of October, Bowman was the attorney of the department; they employed other counsel, but relied chiefly upon him, according to the statements of Mr. Price to General Hood, president of the Louisiana branch of the Life Association of America. It has been said that the life association owned about eight-tenths of the Columbia stock. The two companies were substantially under the same management—the officers of the one were the directors of the other. The life association was also seeking to make an arrangement by which the policies of the Columbia should be transferred to it. The special statement demanded was made to the department on 8th October, and on the 14th the life association engaged appellant to act as its attorney for one year, at a fee of $7,000 paid in advance, and directed him to obtain a return of this special statement. Appellant was also to protect the Columbia against the demands of the department until February, 1877. On the 16th October a letter was written by the superintendent to Bryant, actuary of the life association and vice-president of the Columbia, in which it was stated that the demand for 4½ per cent. valuation was made only to keep Price's record straight. This letter was dictated by appellant, and was accompanied by a return of the special statement. On the 20th the president of the Columbia endorsed on this letter: "The attorney of the department told me this day that the statement returned with this letter was not again to go to the department, and that the statement asked in the first paragraph must be of the same date as the other papers asked for in this letter." On the same day Bryant com-

plained to appellant that the Columbia had been required to state the value of outstanding policies on October 1st. Appellant asked how it should be, and Bryant replied that it should be of the date of the supplementary statement. The department sent a letter, on the same day, to the Columbia, indicating the change suggested by Bryant.

The difficulty of adopting any plan for transferring policies from the Columbia to the life association arose from the fact that the assets of the St. Louis Mutual, which company had been re-insured by the Columbia, had been exhausted by deaths. The life association hit upon a plan of putting the St. Louis Mutual into the hands of a receiver, in order to separate it from the Columbia. The life association stated its desire in this matter to Bowman, and he said he would put the St. Louis Mutual into the hands of a receiver whenever the life association desired; and that the department would call for a statement from the St. Louis Mutual. Accordingly, on 10th November, the department called upon the Columbia for a statement of the St. Louis Mutual. The statement was made on 1st December, at the suggestion of Bowman, who said that Adams would be appointed by the department to make the examination, and that it would be a superficial one, confined to the number of suits against the Columbia. The statement was made after conference between Bryant, actuary of the life association, and appellant, in which Bryant told appellant what the statement would be, and asked if that was sufficient for the purposes of a suit against the St. Louis Mutual. This statement was made on December 1, by the Columbia. It contains merely the accounts between the Columbia and the St. Louis Mutual, and says nothing about liabilities or policies. Adams was appointed examiner. He was told by appellant that he need not examine as to the assets or liabilities of the company, but only as to suits against it. The particulars as to the suits he ascertained from the attorneys of the Columbia, and made his report accordingly. His fee was paid by the Columbia.

Suit against the St. Louis Mutual was then brought by the insurance department. Appellant, attorney for the department, moved for judgment on the pleadings. The proceeding was dismissed by the court, on the ground that, as the company was not receiving new business, it could not be proceeded against by the department. Appellant at once notified the Columbia of this, and told them that he would appeal, but that the judgment was law until reversed, and that they ought to pass the necessary resolution and inform the department that they were taking no new business, and were, therefore, subject to no further demand for statements, and should contest the authority of the superintendent to take any action against the Columbia. This, he said, would relieve the department and the company of embarrassment. This suggestion was acted upon. The attorneys of the company drew the appropriate resolution, em-

bodying in it every suggestion of appellant. After this dismissal, the attorneys of the Columbia obtained from the president of the St. Louis Mutual, which still had a separate organization, special authority to represent it.

Before the judgment of the circuit court the department had again demanded a statement from the Columbia, but the president of the St. Louis life, on inquiring of appellant what it meant, was told to tell the Columbia that it meant nothing—that Price was only keeping his record straight.

On 29th January, 1877, three weeks after the judgment of the circuit court, the cause having been advanced on the docket on application of counsel for both sides, the judgment of the circuit court was reversed in the court of appeals, which held that the St. Louis Mutual was still answerable to the department, though it had ceased to take new insurance. Receivers were then appointed for the St. Louis Mutual. This, the president of the life association says, he regarded as a step towards relief; and that, in this, appellant acted as they desired.

The special statement of the Columbia was filed on the 8th February. It was not sworn to, and did not go into the particulars which had been required by Price's letter of 16th October. The examiners appointed for the Columbia were chosen from the most experienced real estate dealers of the city. They made their report, which was confined to a valuation of the real estate. This they estimated at about one-third less than the value put upon it by the company. They set the value of the insurance building property, on which the deed of trust had been given for $400,000, at $600,000. But they say in their report that the property would not sell for that under the hammer, and that the rental hardly justifies the valuation. At the time of the change of securities this property had been returned as worth over a million. On the 10th February this report was filed. On the same day, Hough, president of the life association, and Douglass, president of the Columbia, had a meeting with appellant at his office, in which appellant said they must permit a final decree to be entered against the St. Louis Mutual, or he would at once proceed to put the Columbia into the hands of a receiver. Appellant, at the request of Hough, then made the following memorandum in writing of his demands, to be submitted to the attorneys of the St. Louis life and Columbia: "I want your counsel to now consent to a final decree of dissolution of the St. Louis Mutual life, and a winding up of its affairs. I want the Columbia life to enter a voluntary appearance and consent to a decree for an accounting. Experts to be appointed by the court to make such account. The Columbia consent to turn over to the receivers $10,000 on account. If you prefer that an order be made authorizing the receivers to bring an action for accounting against the Columbia, the latter company to enter a voluntary appearance, and experts to be appointed by the court to take an accounting."

Hough and Douglass believed the Columbia to be fairly solvent, and wanted an accounting and winding up of its affairs with the St. Louis Mutual; but they did not want the Columbia itself wound up. They were extremely desirous that nothing of that sort should happen. They protested against the payment of $10,000, and wanted to know what it was for. Appellant said it was for contingent expenses of the receivers, who otherwise would not have enough to buy lead-pencils. On the 12th, after consultation with the attorneys of the Columbia, a stipulation was drawn up that if proceedings should be immediately instituted for an accounting between the receivers of the St. Louis Mutual and the Columbia, and an appearance entered by the officers of the Columbia in the case, there should then be no presentment at this time of any application for an injunction against the Columbia, nor for a receivership based on the report of the real estate experts and examiners, or other examination, but the superintendent will wait the reports of the examiners of accounts, or referee, in the accounting suit. This, after many changes suggested on one side and the other, was at last written out fairly in the shape of a letter from appellant as attorney of the insurance department to Davis and Smith, attorneys of the Columbia. It was signed by appellant and countersigned by Price. Appellant threatened the Columbia with the appointment of a receiver unless the $10,000 for the receivers of the St. Louis Mutual was paid; and he submitted to the receivers his report, that the companies had promised, if he should so demand, to consent to a final decree vesting the property of the St. Louis Mutual in the receivers, and to enter a voluntary appearance to a suit of the receivers of the St. Louis Mutual against the Columbia, and to pay over to the receivers $10,000. This money was paid by instalments. The final decree in the St. Louis Mutual case was entered on 15th February. Appellant, as attorney for the receivers, brought the suit for an accounting between the St. Louis Mutual and the receivers, before the end of the month. Bryant, vice-president of the Columbia, told appellant that he must get an injunction to hold matters in *statu quo* as to the Columbia until the accounting was finished. In a day or two an interview was had between Hough, Bryant and Smith, of counsel for the Columbia, in which Bowman submitted to them a petition, prepared by him as attorney of the insurance department, to be filed against the Columbia. Bryant objected that this was not what the Columbia wanted. The allegation as to the insolvency must, he said, be modified; it was too strong; and there must be no application for a receiver, as that would wind up the Columbia. The allegation as to insolvency was modified; and it was carefully explained to Bryant by Smith and Bowman that the application for a receiver was a form required by the statute, and that it need not be insisted upon. Bryant was still in fear; he could not understand how there could be no danger that the court might possibly grant a receiver in a proceeding which asked for

one. Appellant then said that he would give to the Columbia a stipulation for the dismissal of the suit, with the date left blank, to be filled out by those interested in the Columbia at will. When this petition was filed the judge of the circuit court made a restraining order. Appellant was notified by the Columbia that this order did not suit them. It was modified by consent. A referee was appointed, who began an investigation, and subpœnaed officers of the Columbia. This action alarmed Hough. He at once wrote to appellant: "I cannot tell, of course, but this looks to me like an attempt to force the Columbia into the hands of a receiver. The association owns stock in the Columbia, and putting that company into the hands of a receiver before its condition is fully ascertained will, of course, damage the interests of the association. Please take steps as attorney to prevent such proceedings. I know you can succeed if you attend to it at once. When will you see me?" To this appellant replied that he did not like this distrust; that the apprehensions were groundless. "Our memoranda of agreement," he writes, "you have faithfully performed on your part; it will not be broken on ours." He asks Hough to name a time for meeting between himself, Hough, Douglass and Smith. The meeting was had, and appellant assured the representatives of the Columbia that the matter before Jones, the referee, was all right and their alarm groundless. "There will be no receiver," he said, "appointed for the Columbia in consequence of that inquiry. Jones cannot get along very far. We will keep him occupied as to the value of the real estate. He will spend some time over this, as he is now doing; and when he comes to the policy lists he must stop." Judge Jones, it appears, did not stop, though there is evidence that appellant endeavored to stop him, and remonstrated vigorously with a witness for answering questions before the referee in regard to these matters. Their exposure, from what appears in this record, seems to have been the result of the actions of Judge Jones as referee in the proceeding for an accounting between the St. Louis Mutual and the Columbia.

Under these charges, and the evidence introduced to support them, the court instructed the jury substantially: That if Bowman, being then the paid attorney of the life association, instituted, as attorney for the insurance department, the action against the St. Louis Mutual, and that the life association had pecuniary interests in the issues involved adverse to those of plaintiff in the action, they must find for relators on the sixth charge. If Bowman was the attorney of the insurance department in the case of Price vs. The St. Louis Mutual, and being so, agreed with the Life Association of America to carry on the suit in their interest, and subject to their order, and did so in pursuance of such agreement, they must find for relators on the seventh charge. If Bowman, for a valuable consideration paid by it, was the regular attorney of the Life Association of America, and whilst so engaged, instituted and

prosecuted, as attorney for the receivers, a suit against the Columbia life, and if the life association owned a controlling interest in the Columbia life, and by that means controlled that company at the time, and its relations and interests were adverse to those of the receivers, the plaintiffs in that suit, and these facts were known to Bowman when the suit was instituted, they must find for relators on the eighth charge. A similar instruction to the last was given as to the ninth charge, concerning the action of Price against the Columbia. The instruction on the tenth charge was to the effect that, if Bowman was attorney for plaintiff in Price vs. Columbia life, and, at the date of the suit, entered into a corrupt arrangement with the officers of the Columbia or of the life association to institute or prosecute that suit in obedience to their wishes, and to deliver them an order for the dismissal of the suit, or to dismiss the suit at their request, the verdict must be against respondent on this charge. The jury were told as to the eleventh charge that, by the law of this state, the superintendent of insurance is prohibited from employing the attorney of any insurance company as legal counsel as to any proceeding he may be required to institute, and that if the life association was an insurance company and defendant its attorney, and whilst so engaged he became counsel for the department in prosecuting the suits of the department against the St. Louis Mutual and the Columbia, they must find against defendant on this charge.

For the appellant, the court instructed as to these charges that the jury could not find against him, unless they found the following facts: As to the sixth charge, that he instituted the suit mentioned; that he was then attorney for the life association as to all its business; that the life association was, in relation to its business, interested in the suit; and that Bowman knew that its interests were adverse. As to the seventh charge, that, whilst attorney of the insurance department in respect to the suit mentioned in the charge, defendant entered into an agreement with the agents of the St. Louis Mutual, or life association, to carry on the suit subject to the order, or in the interests, of the life association; and that he instituted and prosecuted the suit in pursuance of this agreement. As to the eighth charge, that defendant was attorney of the life association; that it was pecuniarily interested in the suit; that its interest was adverse to that of plaintiffs; and that defendant knew this at the time. The same as to the ninth charge. As to the tenth charge, the jury must be satisfied from the evidence that defendant entered into a corrupt arrangement with the officers of the Columbia or the life association to institute or prosecute the suit in obedience to the requests of one or both of these companies and to deliver to them an order of dismissal, or that he would dismiss the suit at their request. As to the eleventh charge, the jury must find that defendant was attorney for the life association for one year from 10th October as alleged, and that during that term

he became attorney of the superintendent of the insurance department in respect to instituting and prosecuting the suits alleged, or one of them.

These instructions were warranted by the evidence, and put the case fairly to the jury.

The defendant asked, and the court refused, the following instructions:

"That an attorney, by reason of his employment for one corporation, is not precluded from instituting or prosecuting proceedings against another corporation in which the first owns stock."

This instruction as applied to the facts in evidence, in the present case, could only mislead. If intended of a case such as presented by the relations shown to have existed between the life association and the Columbia, it is bad law.

"That the prosecuting of the suits of Price against the companies under the appointment of the circuit court, was not an employment by the superintendent of insurance."

This instruction was properly refused. The evidence was that Price, according to the custom of the department, recommended Bowman to the court as the proper person to prosecute the suits in his name, and agreed with Bowman that he should look for his pay to such compensation as the court should allow to be taxed as costs for his services. The attorney's fee allowed to Mr. Bowman by the court under this appointment in one of these cases was $2,500. That he was the attorney of the department under Price's administration from the first, and its specially-trusted adviser and authorized by it to bring the suits in question, is a fact that clearly appears from all the evidence in the case, documentary and oral. The fact that, under the law, he was to look to the assets of the insurance companies, and not to the insurance department, for a fee for his services in these cases, could not in any way affect Mr. Bowman's duty to the department, or palliate the offence of betraying the interests intrusted to his care by the plaintiff and the court. The court appoints the attorney.—(Wag Stat., 754, § 42.) This was done, of course, as it was actually done in the present case, on the suggestion of the officer who, as superintendent of the insurance department, represents for the state the interests of creditors and and policy-holders of the company attacked; and the attorney who instituted and who thus prosecutes the suit by authority of the superintendent, surely does not cease to be the attorney of the department in that matter because he is appointed by the court to act in that capacity.

The court was asked to say that the proceedings against the companies were not for the purpose of establishing any claims against either, but for the purpose of ascertaining their solvency; and if the jury believe that they were hopelessly insolvent no loss or damage could result to the Life Association of America.

This instruction was properly refused. The *gravemen* of these

charges against defendant is, that he acted, at once, for the department, whose duty it was to expose the weakness of these companies if they were weak, and for those directly interested in concealing that weakness. That it might have been better for the companies themselves to commit *hari kari* rather than to fight off the executioner, can be no excuse for the act of their sworn defender in helping to force the knife into them against their will.

The court properly refused an instruction to the effect that the life association could not be bound by any judgment against the Columbia or the St. Louis Mutual life, and that its incidental interest did not preclude the appellant from accepting the employment and appointment of the circuit court for the prosecution of these proceedings.

Another instruction asked and refused was to the effect that, if respondent was employed in special cases by the insurance department, he might properly sign his name as attorney for the department; and that this was no evidence of employment as general attorney of the department.

This instruction could only mislead. There is no question that defendant was the attorney of the department. The evidence shows that he so held himself out, in speech and writing, on all occasions, and was so recognized by the superintendent, by counsel for the companies, and by all concerned in these matters of the St. Louis Mutual life and the Columbia and life association. It is true that Mr. Price says that the department had no regular salaried attorney, and consulted many lawyers; but that is nothing to the purpose.

Defendant asked the court to instruct that there is no statute expressly prohibiting the employment of any attorney by the superintendent of insurance in proceedings against one insurance company because such attorney is, at the same time, employed as attorney of some other insurance company.

This is not to the purpose. It needs no statute to prohibit an attorney from acting at the same time on two sides of a controversy. The question is not a question of names. The attorney cannot betray the interests of his client confided to him, without committing a breach of trust, staining his honor and violating his oath. The question was, as put to the jury by the court, Was the life association practically the Columbia life? Were the interests of the Columbia life and the department adverse? These were the real issues of fact to submit to the triers of the facts.

The court refused to declare that the section of the statute prohibiting the employment of certain persons by the superintendent of insurance does not refer in express terms to attorneys at law, and is fairly susceptible of being otherwise construed; and, if otherwise construed, there can be no conviction on the eleventh charge. We are of opinion that this section (Wag. Stat., p. 34, § 7), by a fair construction, includes attorneys at law. But it is not material. If the

only charge against defendant was an inculpable violation of a statutory provision, of whose meaning he was really ignorant, the proceeding ought never to have been set on foot, and should have been dismissed. The obligation not to act both for the insurance department and against the insurance department at the same time, was one not created by statute, but necessarily arising from the nature of an attorney's duty and the relations which the insurance department of the state bears to the insurance companies. It is contended by appellant that the instructions given show that this relation was completely misunderstood by the trial court. We do not think so. It is obvious that the interests were such that they could not be properly represented by the same counsel.

An instruction based upon the hypothesis that the suit of the receivers of the St. Louis Mutual against the Columbia was carried on in pursuance of an amicable understanding between the receivers and the life association was properly refused, because there is no evidence of any such understanding, or that the receivers were parties to any arrangments which the attorney may have made to carry on the suit against the Columbia to please the life association.

7. The charges from 12 to 16 inclusive, are to the effect that the defendant, on the 15th March, 1877, being attorney of the Life Association of America, under contract for one year from the 14th October, 1876, in consideration of $3,500, received from them, unlawfully combined with Brawner, McKay, Carroll, and Houghton, to change the management of the life association, and to place it in the hands of McKay and others; that at that date, without the consent of the life association, being attorney as aforesaid, he accepted from those men $3,500, as a reward for effecting a re-insurance of ten millions of the risks of the life association in the Pacific Mutual, and for changing the management as before stated; that, at the same time and under the same circumstances, and whilst claiming, also, to be attorney of the insurance department of Missouri, he agreed with the same men for $3,500 cash, and an equal amount to be paid when he effected his work, to use his influence as attorney of the life association, and his power as attorney of the department, to secure the re-insurance aforesaid in the Pacific Mutual, and to place the management of the life association in the hands of McKay and others, then in the employ of the Pacific Mutual; that defendant induced the persons named to pay him $3,500, on the pretence and promise that he could and would, as attorney of the life association and of the insurance department, secure this re-insurance and change of management, though he well knew at the time that he could make good his promise only by bribery of the officers of the life association, and corrupt use of his influence with Price, superintendent of the insurance department; and that, pursuant to this undertaking, defendant secured the appointment of McKay as examiner of the life association, well knowing that McKay was a

salaried officer and employee of the Pacific Mutual, which appointment was contrary to express law, and in violation of defendant's obligations to said association.

In regard to these charges the evidence tended to show that in February, 1877, Houghton and Carroll were directors of the Pacific Mutual Life Insurance Company of California; that they reside in California, and at the date named came to St. Louis in consequence of a telegram from McKay, who had been president of the Alliance Insurance Company of Leavenworth, Kansas, the risks of which company had been re-insured by the Pacific Mutual. McKay was connected with the Pacific Mutual in that business, was in the employ of the Pacific, and was in communication with Mr. Bowman. Carroll and Houghton brought with them letters of credit for $60,000. Their object in coming was to effect a re-insurance for a time of $10,000,000 of the risks of the Life Association of America. They were brought to St. Louis by rumors of the troubles of that company, and a hope that, in consequence of these troubles, they might extend the business of the California company. On their arrival they put themselves at once in communication with Brawner, a well-known insurance man, the agent in St. Louis of the Pacific Mutual, and they were, by him, recommended to engage the services of Bowman as a "live man," experienced in insurance matters, and the attorney of the life association. $40,000 was to be paid over to Brawner if the plans of Carroll and Houghton were effected. But Mr. Bowman refused to look to this fund for his pay, or to take any contingent commission. He refused to act at all until an arrangement satisfactory to him was made for paying for his services, and insisted that he was worth $7,000 a year; that he was already paid at that rate by the life association; and he would consent to no other arrangement than that he should be employed by the Pacific Mutual for one year at $7,000 a year, as their attorney in St. Louis; one-half of this yearly salary to be paid in advance, the company to have the option of rescinding the contract at the end of six months. According to Houghton's testimony, Bowman stated that he was the attorney of the superintendent of insurance, and that, if the officers of the life association refused to make the re-insurance which he should advise, he could bring a pressure to bear upon the life association. Carroll thought that Bowman charged a "whale of a price." But his terms were accepted, and a written agreement made embodying these terms. This agreement contains a provision that, for any business out of St. Louis, except at the state capital, Mr. Bowman should be allowed reasonable compensation, and an allowance for his expenses, and that he should not act against the insurance department. It had been suggested that some legislation might be needed to carry out the plan. Appellant approached Mr. Coste, treasurer of the life association, with a proposition in regard to the matter that Coste indignantly regarded as a bribe, but

which Mr. Bowman contends was innocently meant. The officers of the Pacific Mutual remained about three weeks in St. Louis, during which time, Houghton says that appellant constantly positively assured them that the object would be effected. But they found that appellant had not the influence in the matter which they had thought he had. They became satisfied at last that his relations with the directory of the life association were such that any measure that he would recommend was not likely to be adopted, and they returned without effecting their object. A great many different plans were suggested in the conferences of Brawner, Carroll, Houghton, and Bowman. The idea of wrecking the St. Louis life was rejected as dishonorable; but it was proposed to oust the existing officers, except, perhaps, Hough, the president, and a great part of the directors. But the California men found, to their disappointment, that this would take more time under the insurance law of the state than they had been given to expect, or than they proposed to give to the matter. Appellant concealed from the officers of the life association the fact that he had become the salaried attorney of the Pacific Mutual; and when Bryant taxed him with being a party to carrying out the project set out in the contract between Carroll and Brawner, he indignantly denied any knowledge of any such contract. Bryant had come to the interview prepared, with the contract itself in his possession, having obtained it from Carroll for the purpose. After Bowman had denied, again and again, with strong asseveration, that any such agreement existed, Bryant produced it from his pocket. Mr. Bowman then said that he was the victim of circumstances. And he proposed an investigation into his conduct before a respectable attorney named. This proposition he subsequently withdrew and suggested an investigation before the directors of the life association; but no investigation was had. Appellant then wrote to Hough and Bryant that he felt there had been a misunderstanding all round. After the California insurance men had returned home, the Pacific Insurance Company, which did little or no business in Missouri, had hardly any use for appellant's services. The principal, and about the entire, object of his employment, according to Houghton's testimony, being the re-insurance of the life insurance company's risks, and that having fallen through, the company availed itself of the privilege of avoiding the contract at the end of the first six months. There was some testimony to the effect that, pending these negotiations, appellant had declared that he was going to put the life association into the hands of a receiver. On being accused by Hough of having made this threat, Bowman manifested much emotion at the want of confidence shown him by the accusations, and swore "by the Holy Bible of his mother" that neither he nor Price had ever entertained such an idea. The money by which Bowman was paid the $3,500, was not the money of the Pacific Mutual. It appears that McKay, Carroll, Houghton, and Brawner, expecting to make a good thing of it if the arrangement

was carried out, raised the money to pay appellant on their own notes, one of the California gentlemen advancing the entire sum from his private funds and the others giving him their notes for $875.00 each.

The jury were instructed as to these charges at the instance of relators, substantially as follows:

As to charge thirteen, that if defendant, being general attorney of the life association, under contract for one year, accepted from McKay and the others named, or from any of them, any sum for the re-insurance of ten millions of risks, as stated in the charges, or for procuring a change in the officers and directors of the Life Association of America, and placing it in the hands of McKay and the others named, without the consent of the life association, then they will find against defendant on this charge. Unless the life association consented to the alleged employment of defendant with knowledge of the purposes to be accomplished, such employment was without its consent; and it is immaterial, if defendant received the money, whether he supposed it to be the money of the Pacific Mutual or not.

As to charge fourteen, the jury were told that, if defendant was the attorney of the life association as aforesaid, and then claimed to be the attorney of the insurance department, and agreed with McKay and the others named, for the consideration named, to use his influence as attorney of the life association, or his power as attorney of the insurance department, to bring about the re-insurance above spoken of, or to place the management of the life association in the hands of McKay and others, and McKay was then in the employ of the Pacific Mutual, the jury will find defendant guilty of this charge, though they further find that the defendant supposed the money paid was not that of the Pacific Mutual.

The instruction on charge 15 is to the effect that if defendant pretended to McKay and the others that he could and would, as attorney of the life association or of the insurance department, secure for these men a change in the management or the re-insurance of these risks, and, thereby, induced the payment to him of $3,500, and knew at the time that he could not make good these promises, except through bribery of the officers of the life association, or a corrupt and oppressive use of his influence with the superintendent of the department, then they will find defendant guilty, whether he was then attorney of the life association or the insurance department or no, and whether or no he supposed the money paid him was that of the Pacific Insurance Company.

As to the seventeenth charge, the jury were told that if the defendant, at the date named, being the attorney of the life association, agreed with McKay and others, for a consideration, to procure for them the management and control of the affairs of the life association, and pursuant to this undertaking procured the appointment by the superintendent of the insurance department of McKay,

as examiner of the life association, McKay being at the time, to the knowledge of defendant, a salaried officer of the Pacific Mutual, defendant is guilty under this charge, whether he knew the money he received was that of the Pacific Mutual or not.

Instructions given on these charges, at the instance of defendant, are not, of course, complained of by him, and cannot be noticed, the consideration of these numerous charges, and of the various points made by appellant, having already extended this opinion to an inordinate length.

Of the thirty-six instructions asked by appellant and refused, ten apply to the charges which we are now specially considering. Some of these instructions were refused, apparently because the points are sufficiently covered by those given. Others were so palpably inadmissible that it will not be expected that we should notice them.

The instruction asked by appellant as to the fifteenth charge was properly refused. Its hypothesis is that defendant should be acquitted, unless he made an oppressive use of his influence with Price. This ignores the gist of the charge that appellant promised McKay and others to accomplish what he expected to effect only by bribery, and corrupt use of his influence as an attorney.

The instruction that if defendant only agreed to act for the Pacific Mutual in the manner specified by the written agreement, they should find him not guilty, was unnecessary in view of the instructions given on this point at the instance of appellant, and which correctly declare the weight to be given to the written agreement. It was not conclusive in this proceeding as to the real character of the agreement between defendant and the California company.

8. As to the seventeenth charge, the gist of it seems to be that pay was accepted by appellant from the opposite side for work to be done for appellant's client by him, and that this money was accepted by appellant without his client's knowledge or consent. The instruction given seems unexceptionable. As to the instructions refused which relate to this charge, we are not able to say that error was committed, because none of the evidence is preserved, the record saying only that evidence was introduced tending to prove the charge. There may have been no evidence tending to show that this money was received for the expenses of printing, which is the hypothesis of one of the refused instructions. The submission of the cause upon the docket of the supreme court forms no part of the charge, and the instruction as to the consent of the attorney-general to such submission was, therefore, properly refused.

9. An instruction that the jury could not inquire as to any act done by defendant more than one year before the filing of the complaint, was based upon the erroneous idea that this was a proceeding to punish defendant, and to punish him for misdemeanors in the sense in which the word is used in the chapter on crimes and punishments.—(Wag. Stat., 516, § 35.) It appears from what has been already said, that this instruction was properly refused.

10. The court also refused to tell the jury that to sustain the charges, it must appear that defendant committed the acts charged intentionally, willfully, and knowing them to be wrong. In this there was no error. The acts charged were, as to many of them at least, of such a character, that the attorney committing them was equally unfit to practice law, whether he knew them to be wrong or not. Who does not know that it is wrong for an attorney to take money on both sides? If there be any one who sincerely thinks that having done so, he is in a better condition to take an impartial view of the matter in controversy; that he serves his client better by being also in the service of the other side; and that it is, therefore, no harm for him to be secretly in the pay of the enemy, or of the opponent, he is a moral idiot. But a moral idiot is not fit to practice law. No one is fit to do so who does not understand that there is no trust of a purely secular character more sacred than that created by the relation of attorney and client. In a proceeding of this character, the question is not necessarily as to the degree of moral turpitude; a case for disbarment may, perhaps, be imagined in which there should be little or none. The facts constituting malpractice, deceit, or professional misbehavior having been found, it is for the court, before which the proceeding is had, to say how far they consist with fitness to practice law, and to pronounce judgment accordingly.

There may, of course, be instances in which it would be necessary to sustain a charge against an attorney in a proceeding to disbar, to show not only a wrongful act, but a corrupt purpose. An attorney may misconceive his powers. In People vs. Sanborn, 2 Ill., 123, the attorney had agreed to an entry of judgment against his client. It was held that, having been specially employed to defend the suit, he had no right to do this without the consent or knowledge of his client. But as it did not appear that the client had a legal defence, it was held that the motive might have been good, and the charge was not sustained.

Where the act is an indifferent one, the case ought to be free from reasonable doubt, not only as to the act, but also as to the motive. But where the act itself is bad, the intent to do the act is a bad intent, and it can never be necessary to prove that a man intended to do what he is shown to have done. An attorney who knowingly takes money from both sides, intends to do that which is a breach of his duty in a matter which is especially the point of honor with an attorney. The moral sense of the community condemns this as a betrayal of the client; and if there should be any one in the profession who did not know this to be wrong, he would perhaps be more dangerous than one who is shown to have committed the offence with full consciousness of the gravity of the act, and if possible, he would be even more unfit to practice law.

It has been suggested on the argument of this case that, behind the officers of these corporations was the corporation itself; that is,

its stockholders, policy-holders, and creditors, the parties really interested; that the acts done, though concealed from the officers of these corporations, were really for the benefit of those interested in the corporations whose consent may be presumed, and that the consent of the other client, the superintendent of insurance, is shown. If there were anything in this argument, which there is not, it is two-edged. If the officers of these corporations, legally authorized to manage their affairs, the flesh-and-blood clients of Mr. Bowman, are to be regarded as men of straw, so also in the same sense was Mr. Price a man of straw, and his knowledge that Mr. Bowman was acting at once for the insurance department and the insurance companies, if he knew it, and his consent, if he consented, was no justification, because he acted in a purely representative capacity, not for himself, but for the people of the state, whose interest it could not be that the attorney employed to wind up the company against their will, should be the salaried attorney of the corporation attacked.

11. There was no error in refusing the instruction asked by appellant, that the jury could not find against defendant on a mere preponderance of testimony, but must be satisfied beyond any serious doubt. The jury were properly told, as to this, that appellant was entitled to the presumption of innocence, and that each offence must be established by satisfactory proof.

12. Though the record shows objections noted here and there to the admission or exclusion of evidence, yet in only three cases is an exception saved to this action of the trial court.

The report of the insurance commissioner of Kentucky, containing a statement of the grounds upon which he recommended the revocation of licenses to agents of the Life Association of America in Kentucky, was offered to show what facts were known to Mr. Bowman inducing him to advise a re-insurance of risks and the date of the information, and for the purpose of establishing his good faith. It was properly excluded. This unfavorable report could be no excuse for the action of an attorney in entering into a combination with others without the knowledge of his client, to transfer the management of the corporation or to make bargains for it against its will. The corporation acted, and could act, only through its officers. These were Mr. Bowman's clients. He had no right, whilst in the employ of the company, secretly to confederate with others against them, or to act without their knowledge or concurrence, secretly, on some notion of his own as to what it might be best for the corporation to do.

13. In his testimony as to the first and second charges, Mr. Bowman spoke as to an important conversation with Mr. Hill, held, as he swore, in a depot of the Pacific road, just as Mr. Hill was starting on a railroad journey. Mr. Hill swore that no such conversation ever took place. Mr. Bowman had stated that the conversation

was at one of the depots of the road; he believed at the old Seventh-street depot, but was not certain as to which. At the close of the testimony as to these charges, relators were permitted to introduce evidence in rebuttal that through-passenger trains did not, at the date of this conversation, start from the old Seventh-street depot. Appellant moved to strike out this testimony, as not in rebuttal. The court refused to strike it out. It is certain that this action of the court is not such error as would warrant a reversal of the judgment, whether this evidence was strictly in rebuttal or not, a point which we need not examine.

The appellant, whilst a witness in his own behalf, was asked whether, when acting as attorney for the department, he knew of the provision of the statute.—(Wag. Stat., p. 734, § 7.) This is the amendment to the insurance law prohibiting the insurance department from employing agents or employees of insurance companies. It does not appear in Wagner's Statutes of 1870. Relators objected to this as not in rebuttal of the testimony of Bryant. It does not seem to be in rebuttal; and as we have already said, the defendant's ignorance of the general insurance law of the state, if shown, would have been no palliation of the graver charges which in themselves warrant the judgment.

We have given to this case the careful consideration which it deserves. Every word of the testimony in the record has been read and the arguments and briefs of counsel have been attentively considered. With the weight of the evidence we have nothing to do. It appears from what has been said, that there was evidence to support the verdict of the jury, and this being so, the judgment seems to follow as a matter of course.

14. Eleven jurors signed a paper requesting the judge of the trial court to impose a light sentence in view of mitigating circumstances. The court, with perfect propriety, refused to consider this paper. It was for the jury, under our statute, to say whether the charges were proved; and if the court, which also heard the evidence, refused to set aside this finding, it was for the court also to say what sentence should be passed under the law. The court considered the defendant, on these facts, was entirely unfit to practice law in Missouri, and entered judgment that he be removed from practice as an attorney in this state. If no error was committed in arriving at the verdict, we have no right to interfere with the judgment, if it was according to the nature of the facts found—that is, unless it was clearly excessive. But this cannot be said. The judgment must, therefore, be affirmed. It is so ordered. All the judges concur.

R. A. BAKEWELL.

And afterwards, at the March term of said court, to wit, the 15th day of April, 1879, the following bill of exceptions was filed in said cause, to wit:

In the St. Louis Court of Appeals.

IN THE MATTER OF THE CHARGES AGAINST }
Frank J. Bowman on the relation of }
Alex. Martin et al. }

Be it remembered, that on the third (3d) day of February, 1879, the following proceedings were had in the above-entitled cause.

The appellant Frank J. Bowman filed an application for a writ of certiorari, in words and figures following, to wit:

Bill of Exceptions.

IN THE MATTER OF THE CHARGES AGAINST FRANK }
J. Bowman, an Attorney at Law. }

Suggestion of Diminution of Record.

Now comes the appellant and respectfully suggests and shows, that such errors have occurred in the making up of the record in this cause by the clerk of the Circuit Court of the City of St. Louis, that full justice cannot be done in the premises unless by proper order made, the transcript of said cause is remanded for correction; and cause why this application should now be entertained by this honorable court, fully appears from the record, and the certificates of the clerk of said circuit court, and affidavits hereto attached, and made part of this suggestion and application. And by reason of the facts disclosed and shown in manner as above, it is respectfully suggested and asked that this honorable [*court*] order that the transcript in this cause may be remanded for the correction in proper manner of the errors specified and shown; and for such other and further order as to justice may appertain and to this court may seem proper.

HIRAM J. GROVER,
FRANK J. BOWMAN, *pro se*,
WAGNER, DYER & EMMONS,
for Appellant.

And in support of said application said appellant filed also the following affidavits and written documents, to wit:

1. Affidavit of said Frank J. Bowman, bearing date February 3d, 1879.

Affidavit of Bowman.

STATE OF MISSOURI, }
CITY OF ST. LOUIS. }

Frank J. Bowman, being duly sworn, on oath deposes and says, that "*In the matter of Frank J. Bowman*," tried before Judge Wilber F. Boyle, in the Circuit Court of the City of St. Louis, he presented his bill of exceptions under the provisions of Rule No. 10 of Rules of Practice of the said circuit court, and that in addition to the words of said bill of exception*ed* as signed and returned to this

said court of appeals, the bill of exceptions presented to said judge for his signature contained the following, viz:

Suggestion of Diminution.

1st. On the third line, page 31 of the record in this cause, after the words "Mr. McDonald," the following: "To the ruling of the court in admitting as a juror, Richard Hospes, and to his overruling the peremptory challenge of the respondent to said Hospes, the respondent then and there excepted;" erased from page 22 of original bill.

2nd. On the eleventh line, page 150 of record, after the words "Objection overruled," the following: "Respondent excepts;" erased from page 106 of original bill.

3rd. On second line, page 160 of record, after the words "Objection sustained," the following: "Respondent excepts;" erased from page 123 of original bill.

4th. On line 19, page 170 of record, after the words "Objection sustained," the following: "Respondent excepts;" erased from page 140 of original bill.

5th. On line 24, page 171 of record, after the words "Objection sustained," the following: "Respondent excepts;" erased from page 142 of original bill.

6th. On line 32, page 171 of record, after the words "Objection sustained," the following: "Respondent excepts;" erased from page 143 of original bill.

7th. On line 26, page 172 of record, after the words "Objection sustained," the following: "*Defendant excepts;*" erased from page 144 of original bill.

8th. On line four, third printed column, page 191, after the words "The objection will be sustained," the following: "*To which ruling of the court the respondent then and there excepted;*" erased from page 187 of original bill.

9th. On the 10th line from the bottom of second column, page 192 of record, after the words "The objection was sustained," the following: "*And to this ruling of the court the respondent then and there excepted;*" erased from page 189 of original bill.

10th. On line seven, page 465 of record, after the words "Objected by respondent and objection overruled," the following: "*To which ruling the respondent excepted;*" erased from page 511 of original bill.

11th. On line three, page 467 of record, after the words "As follows," the following: "*The portions of the deposition of J. W. Carroll and J. H. Houghton, marked 'objected to and objections sustained,' were so objected to by the relators, and to the sustaining of such objections, and to the exclusion of such portions of the said depositions, the respondent then and there made exception;*" erased from page 512 of original bill.

12th. On line six, page 533 of record, after the words "Objection

sustained," the following: "*To which ruling the respondent then and there excepted;*" erased from page 514 of original bill.

13th. On line five, page 537 of the record, after the words "Objected to by the relators and objection sustained by the court," the following: "*To which ruling respondent then and there excepted;*" erased from page 515 of original bill.

14th. On line 22, page 538 of the record, after the words "Objected to by the relators and objection sustained by the court," the following: "*To which ruling the respondent then and there excepted;*" *erased* from page 516 of original bill.

15th. One line 27, page 538 of record, after the words "The court excluded the evidence thus offered, the following: "*To which ruling the respondent then and there excepted;*" erased from page 516 of original bill.

16th. On line four, page 540 of record, after the words "The court sustained *the sustained* the objection of the relators," the following: "*To which ruling the respondent then and there excepted;*" erased from page 518 of original bill.

17th. On line 18, page 540 of record, after the words "Objection sustained," the following: "*To which ruling the respondent then and there excepted;*" erased from page 519 of original bill.

18th. On line 15, page 553 of record, after the words "Objected to by the relators, objection sustained," the following: "*To which ruling the respondent then and there excepted;*" erased from page 521 of original bill.

19th. On line four, page 569 of record, after the deposition of H. D. McKay, and after the words "So much of said deposition as is marked upon the margin 'objected to and objection sustained' was objected to by the relators, and such objection sustained by the court," the following: "*To which rulings the respondent then and there excepted;*" erased from page 522 of original bill.

20th. In record of testimony of Judge John Wickham, on line 25, page 659 of record, after the words "Objection sustained," the following: "*By the court who ruled that it was not admissible to permit any expression of opinion by the witness as to the manner in which the case was prosecuted, to this ruling the respondent then and there excepted;*" erased from page 522 of original bill, except the words "By the court."

21st. On line 26 of second printed column, page 662 of record, after the words "Objection was sustained," the following: "*To this ruling of the court the respondent then and there excepted;*" erased from page 526 of original bill.

22nd. On line seven, page 663 of record, after the words "The objection was sustained by the court," the following: "*To which ruling the respondent then and there excepted;*" erased from page 527 of original bill.

23rd. On line 31, page 729 of record, after the words "Objection overruled," the following: "*And respondent then and there excepted to the same;*" erased from page 661 of original bill.

24th. On line 26, page 733 of record, after the words "The court overruled the objection and permitted E. W. Bryant, the witness, to be then examined in chief," the following: "*To which ruling of the court the respondent then and there excepted;*" erased from page 670 of original bill.

25th. On last line of first printed column of page 753 of record, after the words "Objection sustained," the following: "*To which ruling of the court the respondent then and there excepted;*" erased on page 672 of original bill.

26th. On fourth line, second printed column, page 753 of record, after the words "Objection sustained," the following: "*To which ruling of the court the respondent then and there excepted;*" erased from page 672 of original bill.

27th. On line 50 of first printed column, on page 754 of record, after the words "Objection sustained," the following: "*To which ruling of the court respondent then and there excepted;*" erased from page 673 of original bill.

28th. On last line, page 755 of record, after the words "Objection sustained," the following: "*To which ruling the respondent then and there excepted;*" erased from page 674 of original bill.

29th. On last line, page 755 of record, after the words "Objection sustained," the following: "*To the ruling of the court the respondent then and there excepted;*" *erased from page* 676 *of the record.*

Affiant further states that said original bill of exceptions was by said Judge Wilber F. Boyle signed on the 30th day of March, A. D. 1878, the same being the last day of the February term of said circuit court; that the erasure so made as aforesaid from said original bill, concerning the evidence and rulings made thereon, were not by affiant discovered, or to him made known, until after the adjournment of said court for said term; that on account of the volume of said bill and the shortness of time, he had no sufficient opportunity either to discover or seek a correction of said erasures; that after affiant had discovered that said erasures had been made, as hereinbefore set forth, he called upon said Wilber F. Boyle, judge, &c., and charged said Boyle with having made said erasures from said original bill, which charge said Wilber F. Boyle admitted to be true, and at request of affiant evidenced said admission by his statement in writing over his own signature, which said statement is hereto annexed and marked Exhibit A.

FRANK J. BOWMAN.

Subscribed and sworn to before me, this 31st day of January, A. D. 1879.

[SEAL.] CHAS. F. VOGEL, *Clk.*

2. Certificate of Charles Vogel, clerk of the Circuit Court of the City of St. Louis, State of Missouri, bearing date February 3rd, 1879, in words and figures following, to wit:

Certificate of Vogel, Clk.

"STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

I, Charles F. Vogel, clerk of the Circuit Court City of St. Louis, certify that each and all of the 'erasures' referred to in the foregoing affidavit of Frank J. Bowman, appear on the face of the original bill of exceptions in said cause to have been made as in said affidavit set forth and stated.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 31st day of January, A. D. 1879.

[SEAL.] CHARLES F. VOGEL, *Clerk.*"

3. Affidavit of Frank J. Bowman, bearing date February 3rd, 1879, in words and figures following, to wit:

Affidavit of Bowman.

"STATE OF MISSOURI, } ss.
COUNTY OF ST. LOUIS. }

Frank J. Bowman, being duly sworn, on oath deposes and says: that he was prevented and delayed from suggestion a *dimunation* of the record in the above-entitled cause by reason of his expectation of making an amicable agreement with counsel for relators, for the proper correction of the said bill.

That said expectation was a reasonable one, for the reason that agreements for correction, in several instances were made, to make the record conform to the original bill, as will appear by the papers on file in this court, made but a few days prior to the presentment of suggestion of *dimunation*. That negotions were pending for such corrections, and were only broken off about five days since, and that since said negotiations were broken off, there has been no opportunity until this day for a presentment of the application before the three judges of this court. FRANK J. BOWMAN,

Sworn to and subscribed before me, this 3rd day of Feby., A. D. 1879. J. THORNBURGH, *Clk.*

4. Affidavit of Hiram J. Grover and Robert S. McDonald, bearing date February 3rd, 1879, in words and figures following, to wit:

Affidavit of Grover and McDonald.

R. S. McDonald and Hiram J. Grover, being sworn, upon their oaths depose and say: that the bill of exceptions in the above-entitled matter and cause was made and gotten up by the appellant, Frank J. Bowman, himself. That affiant had nothing to do with it, except to receive it from the hands of said respondent and to deliver it to the attorneys for the relators for their inspection before presenting it to the court. That after the bill of exceptions had remained in hands of attorneys for relators some days, it was

presented to the court on the last of the term at which it could be presented for signature of the judge. That these affiants were not made aware at that time that the said judge intended or had been asked by any one to strike out any portion of said bill of exceptions, nor did they know of such fact, nor did they know that the said judge or court had *struck* out any portion or part of said bill of exceptions, until long afterwards, when the transcript of the record containing said bill of exceptions had actually been filed in this court; and said Grover further says: that he was present when said bill of exceptions was signed by the judge, and no allusions or reference were made by the court or any other persons to the fact that any portion or parts of said bill of exceptions, as presented by appellant, had been stricken out.

And affiants both further state that they were the only counsel or attorneys for said appellant who saw or had anything to do with said bill of exceptions, and were the only counsel or attorneys of said appellant present in court when said bill of exceptions was signed, all the other of appellant's said counsel and attorneys being absent from court at that time, as affiants verily believe. And affiants further say that no objection in writing to said bill of exceptions were, to the knowledge of affiant, submitted to these affiants or to appellant by the relators or their attorneys, and affiants were not informed, nor did they know, nor do they now know, that written objections to said bill of exceptions were submitted to the said court in accordance with Rule 10, Rules of Practice of Circuit Court of City of St. Louis.

HIRAM J. GROVER.
R. S. McDONALD.

Subscribed and sworn to before me, this 3rd day of February, A. D. 1879.

CHAS. F. VOGEL, *Clerk.*

6. Authenticated copy of the Rules of the Circuit Court of the City of St. Louis, State of Missouri, in words and figures following, to wit:

IN THE MATTER of Frank J. Bowman. } 1108.

Rules of Practice of the Circuit Court City of St. Louis, in force August 1st, 1877. Revised by the judges in general term, on Thursday, July 12th, 1877, and published by authority of the court. Elmyr B. Adams, John Wickham, Wilbur F. Boyle, James J. Lindley, Amos M. Thayer, judges. Charles F. Vogel, clerk.

Filed Jany. 27, '79. J. THORNBURGH, *Clk.*

* * * * * * * * *

RULE X.

Within ten days after any motion shall be overruled, or any ruling made at "Special Term," to which a party desires to except,

the party excepting to the opinion of the court shall prepare a bill of exceptions, and shall hand the same, or a copy thereof, to the attorney for the opposite party, who shall, within three days thereafter, make objections (if there be any) thereto, in writing, *on a separate piece of paper*, pointing out particularly the alterations and additions to be made thereto. If the party preparing said bill does not agree to such alterations, then the same will be settled by the court. If no objections be made to such bill within three days, all objections will be considered as waived.

* * * * * * * * *

This is to certify that under the provisions of Rule No. 10 of the Circuit Court of the City of St. Louis, we have since August, 1877, held that any party *objecting* to the *introduction* of *evidence at the time when offered*, was considered as excepting to the action of the court, if such objection was *overruled*, and any party offering evidence which the opposite party objected to, if such objection was by the court sustained, the party whose evidence was excluded was considered as excepting to the action of the court, and we have allowed bills of exception in all instances, when asked under Rule No. 10, above mentioned.

JAMES J. LINDLEY,
Judge Court Room No. 4.

The practice in my room has been substantially as above stated. In case a party on trial has objected to any item of testimony and stated the ground of his objection at the time, I have always allowed him the benefit of his exceptions in making up the bill, though objection was not formally taken at the time.

A. M. THAYER,
Judge Room No. 5.

The above is substantially the practice pursued in No. 2. Where counsel on either side request that exceptions to the ruling of the court be made, in all cases the request is complied with.

JOHN WICKHAM,
Judge Room No. 2.

My understanding of the practice is as above stated by judges Lindley, Thayer, and Wickham.

G. B. ADAMS,
Judge Room No. 1.

6. A certain writing or certificate signed by Wilber F. Boyle, in words and figures following, to wit:

IN THE MATTER OF }
FRANK J. BOWMAN. }

In passing on the bill of exceptions presented for my signature, as the judge who tried the above cause, the bill contained a large number of exceptions to the rulings of the court in relation to the admission or exclusion of evidence. On the objection of counsel for relators I struck out of the bill all exceptions that were not for-

merly taken at the time of the trial, and allowed only such to remain as part of the bill which had been taken by the announcement of an exception at the trial.

Also struck out from the bill the statement of an exception to the ruling of the court overruling the challenge for cause to the juror, Hospes, because such exception was not announced at the time such ruling was made. WILBUR F. BOYLE.

7. Certain written documents or certificates signed by James J. Lindley, A. M. Thayer, John Wickham, and E. B. Adams, judges court rooms No. 4, 5, 2, 4, in words and figures following, to wit:

Certificates of Circuit Judges.

"This is to certify that under the provisions of Rule No. 10 of the Circuit Court of the City of St. Louis, we have, since August, 1877, held that any party objecting to the introduction of evidence at the time when offered was considered as excepting to the action of the court if such objection was overruled; and any party offering evidence which the opposite party objected to, if such objection was by the court sustained, the party whose evidence was excluded was considered as excepting to the action of the court; and we have allowed bills of exceptions in all instances when asked, under Rule 10, above mentioned. JAMES J. LINDLEY,

Judge Court Room No. 4.

The practice in my room has been substantially as above stated. In case a party on trial has objected to any item of testimony, and stated the ground of his objection at the time, I have always allowed him the benefit of his exception in making up the bill, though exception was not formally taken at the time. A. M. THAYER,

Judge Room No. 5.

The above is substantially the practice pursued in room No. 2. Where counsel on either side request that exceptions to the rulings of the court be made, in all cases the request is complied with.

JOHN WICKHAM,

Judge Room No. 2.

My understanding of the practice is as above stated by Judges Lindley, Thayer, and Wickham. E. B. ADAMS,

Judge Room No. 1."

No written documents, affidavits, or evidence or testimony were on same day offered by the appellant Martin et al. in opposition to said application, and no other affidavits, certificates, or written documents or evidence or testimony were offered by the appellant in support of said application than those set out herein, and in opposition to said application said relators afterwards, on Feb'y 6, 1879, by leave of said court filed an affidavit of John W. Dryden, in words and figures as follows:

Aff. of Jno. W. Dryden.

STATE OF MISSOURI, } ss.
ST. LOUIS CITY. }

John W. Dryden, of lawful age, being duly sworn, upon his oath deposes and says that he is one of the attorneys for said respondents in above-named cause in this court, and was such in the trial of this cause in the St. Louis Circuit Court; that he has read the affidavit made by appellant Bowman and filed in this court on the 3rd day of February, 1879; that prior to the joinder in error by affiant and his associate counsel for said respondents upon the record in this cause there were some negotiations for and agreements made between said respondents and appellant by their attorneys in respect to a correction of supposed imperfections in the transcript of the record filed in this court, but that all of said agreements and negotiations, so far as affiant knows or has reason to believe, with one exception only hereinafter named, were made and carried on by and between affiant as attorney for said relators on one side, and H. J. Grover, of counsel for respondent, on the other side, and were put in writing, being the stipulations filed in this court on, respectively, the 13th, 18th, and 20th and 23rd days of January, and the 3rd day of February, 1879; that of them the three first named filed on the 13th, 18th, and 20th days of January were simply agreements by which the parties stipulated to make in the future and within times limited therein specific corrections therein named as to the addition to or omission from the record of parts of the evidence claimed by said parties respectively to have been heard or not to have been heard in the court below, and did not in anywise include any agreement to add to said record any statement as to whether exceptions to any ruling of the circuit court not appearing by said record to have been taken had been so taken or not, or as to whether any such had been claimed by respondent to have been so taken at the time of the settlement of the original bill of exceptions in said circuit court, or as to whether said original bill showed at all any such exceptions had been originally written in said bill, but erased therefrom by the judge of the circuit court or any one else at time of such settlement; that the absence in said stipulation of any statement as to such exceptions appears from an examination of said stipulation, and as a matter of fact, in the negotiations preceding the signing of said stipulation it was not mentioned by said Grover or said appellant Bowman that he desired to have said record corrected so as to show anything as to such exceptions; that pursuant to the terms of said three stipulations, and on or about the 22nd day of January, 1879, and before joinder in error by respondents, this affiant and said Grover met together at office of affiant in St. Louis, and each produced and exhibited to each other for the first time the particular matters of correction which under said three stipulations they proposed to have made, and allowed and settled

with one another what corrections should be so made, and reduced their agreement and settlement as to such corrections to writing, and signed the same for their respective clients, which said stipulation so settled and made is the stipulation filed in this court on the 23rd day of January, 1879; that in this last-named stipulation no provision was made for any correction of said record, by adding any statement as to any exceptions having been saved or claimed to have been saved by appellant in said circuit court; that in the interview had between affiant and said Grover at affiant's office on said 22nd day of January, 1879, at which said corrections was settled, the said Grover orally proposed to affiant that there should be allowed some correction of said record by adding thereto some statement showing that divers and sundry exceptions were at the trial in said circuit court, taken by appellant to the rulings of said court in said trial, which by said bill as made up and settled by said circuit court, and as copied into the record, did not appear to have been so taken; but that affiant rejected said offer, and positively refused to agree to any such correction, claiming that no such exceptions had in fact been taken; but said Grover did not propose to affiant to correct said record by adding to same any statement that said bill of exceptions, as originally made, showed the erasures of statements made therein that appellants had saved exceptions spoken of in the affidavit made by appellant Bowman on 31st of January, 1879, and filed herein, with his suggestion of a *diminution* of the record on the 3d day of February, 1879; that, after the 23d day of January, 1879, on which this affiant filed in this court the said stipulation so settled and signed by him and said Grover on the 22d day of January, as aforesaid, affiant had no further negotiations, and was not approached by appellant or his counsel in regard to any correction of the record, except that, either on or about the 24th day of January, affiant called the attention of said Grover to the fact that, by inadvertence, he had omitted to have put in said stipulation, filed on the 23d day of January, a statement as to the addition to the record of a copy of the paper dated February 15th, 1878, signed by eleven of the jurors, and addressed to the court, which is contained in the stipulation filed herein on the 3d day of February, 1879, and thereupon affiant, at request of said Grover, drew up the last-named stipulation, and on said 24th day of January, 1879, signed the same, and delivered it to Grover, to be filed by him at such time as he might desire. Affiant further says that all of said stipulations were written by affiant, and all made and negotiated by him with said Grover, except the one filed on the 18th of January, which was made by affiant with said appellant in person, because said Grover was absent; and affiant has good reason to believe that neither said appellant nor said Grover nor anyone for him at any time applied or negotiated in any way with any of the relators or with any other of their counsel in this matter, other than affiant, for the correction of said record; that when said stipulation, drawn and filed on the 23d day of January,

1879, had been concluded and signed and filed, it was the understanding of affiant that all corrections of said record by consent, under the stipulations filed January 13th, 18th, and 20th, were ended, except as to the matter of the paper signed by said jurors, and nothing was at any time said or done by said Grover or said appellant to affiant to indicate any different understanding on his part; that thereupon, on the 25th day of January, 1879, the affiant for respondent signed the joinder in error upon the record of this court as so corrected; that afterwards, on or about the 31st day of January, 1879, said Grover came to the office of affiant, and producing a certain paper in the handwriting of appellant Bowman, which, in substance, was a statement proposed to be added to the record in this cause, that the original bill of exceptions, as filed in the said circuit court, showed that in every instance during the trial, in which the court sustained objections made by the relators, or overruled objections made by the appellant Bowman, said Bowman had excepted at the time, and that the court, except in three certain instances, had erased the statement of such exceptions in said bill proposed, and asked of affiant if the relators or affiant, as their counsel, would not further consent to a correction of the record by the adding of said statement; that said Grover, when asking such consent, did not make any claim that he so asked for the same by virtue of anything contained in the former stipulation; that affiant at once advised said Grover that he would consult his associate and the relators, and give an answer to his request during said day; that afterwards, on said 31st day of January, affiant gave such answer to said Grover, declining to grant the request. This affiant further says that, as one of the attorneys for the relators in said circuit court, he had to do with the matter of the settlement and allowance by the court of the bill of exceptions tendered by the appellant to the counsel for respondents, and assisted in the preparation of written objections thereto; that the said bill was tendered to affiant and his associates by the attorneys for appellant on or about the 23d day of March, 1878; that after it had been so tendered to them, he and they prepared a writing covering some 12 pages, legal cap, of objections to said bill, and handed the said bill with such objections in writing to the judge of said circuit court, Honorable Wilbur F. Boyle; that said judge, as affiant knows, was engaged for at least one day in examining said bill and the objections made therein; and in making many corrections of said bill. Affiant does not remember whether the said Grover and his associate counsel, R. S. McDonald, or appellant, knew of said corrections; but affiant knows there was no effort to conceal the making of same from them or any of them, and said objection was urged and corrections made in the ordinary way in which bills of exceptions in cases are usually settled in said circuit court; and when same were made the said bill was at the disposal of appellant and his said counsel to file or not as they saw fit.

JOHN W. DRYDEN.

Sworn to and subscribed before me, this 6th day of Feby., A. D. 1879. J. THORNBURGH, *Clk.*"

And the said court, after hearing argument of counsel for appellant and appellees, overruled said application and refused to issue a writ of *certiorari* as prayed therein, to which ruling and order of court appellant then and there excepted at the time.

He, therefore, prays the court to allow and sign this bill of exceptions, and that the same may be signed, sealed, and made a part of the record, which is done, this 10th day of March, A. D. 1879. EDW'D A. LEWIS,

Pres. Judge.

And afterwards, at the same term of said court, the following affidavits and motion and bond for appeal were filed by said appellant in said cause, to wit:

IN THE MATTER OF CHARGES AGAINST Frank J. Bowman, Appellant, at the relation of Alexander Martin et al., Respondents. } Affidavit for Appeal.

STATE OF MISSOURI, *ss.*

Frank J. Bowman, the appellant, being duly sworn, makes oath and says, that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court; and that to the affiant and appellant the value of the franchise or privilege involved in this cause, the forfeiture of which has been decreed herein, exceed the sum of ten thousand dollars.

FRANK J. BOWMAN.

Sworn to and subscribed before me, this 10th day of March, A. D. 1879. J. THORNBURGH, *Clerk.*

In the St. Louis Court of Appeals.

IN THE MATTER OF THE CHARGES AGAINST FRANK J. Bowman, Appellant, at the relation of Alexander Martin et al., Respondents.

And now, by his counsel undersigned, comes said Frank J. Bowman, and prays the court to grant him an appeal from the judgment rendered herein to the Supreme Court of the State of Missouri, on the ground following, viz:

I. There are errors to his prejudice in said judgment.

II. He is entitled to an appeal from said judgment in order that said errors may be corrected.

III. This case involves the right of this appellant to an office, privilege, or franchise, exceeding in value the sum of twenty-five hundred dollars, exclusive of costs, the same being here in dispute.

IV. In this case the appellant's title to an office under the State of Missouri is involved, to wit, the office of an attorney at law.

V. The appellant is a party to this suit, and he is a state officer.

VI. In this case there is involved the construction of the 30th section of article 2d of the constitution of the State of Missouri, which provides that "no person shall be deprived of life, liberty, or property without due process of law.

VII. This case involves the construction of section 30th, article 6 of the constitution of the State of Missouri, which provides that "all writs and process shall run and all prosecutions shall be conducted in the name of the State of Missouri.

VIII. This case involves the construction of section 22 of the State of Missouri, which provides that in criminal prosecutions the accused shall have the right to meet the witnesses against him face to face.

IX. This case involves the construction of the 22d section of article 6 of the constitution of the State of Missouri, which provides that the circuit court shall have jurisdiction over all criminal cases not otherwise provided for by law.

X. The appellant is a member of the bar of the Supreme Court of the State of Missouri, and an officer of said court, as appears from Exhibit "A" hereto attached, and said court has the right or authority to review the proceedings herein, inasmuch as the judgment herein in affect attempts to deprive him of the rights and privileges to which he is entitled as an officer of said Supreme Court of the State of Missouri.

HIRAM J. GROVER,
Appellant's Attorney.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

Frank J. Bowman, the appellant in the foregoing entitled cause, being duly sworn, on oath states that the facts and matters and things stated in the foregoing application are true to the best of his knowledge and belief.

FRANK J. BOWMAN.

Subscribed and sworn to before me, this 10th day of March, 1879.
[SEAL.] J. THORNBURGH, *Clerk.*

Know all men by these presents, that we, Frank J. Bowman, as principal, and —— as sureties, are held and firmly bound unto Alexander Martin, Enos Clarke, Joseph G. Lodge, E. C. Kehr, and E. T. Allen in the sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at St. Louis, this —— day of March, A. D. 1879.

The condition of the above obligation is such, that whereas Frank J. Bowman has appealed from the judgment rendered against him

and in favor of Alexander Martin, Enos Clarke, Jos. G. Lodge, E. C. Kehr, and E. T. Allen in the St. Louis Court of Appeals.

Now, if said appellant shall prosecute his appeal with due diligence to a decision in the Supreme Court, and shall perform such judgment as shall be given by the Supreme Court, or such as the Supreme Court may direct the St. Louis Circuit Court in the city of St. Louis, State of Missouri, to give; and if the judgment, or any part thereof, be affirmed, will comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation to be void, otherwise to remain in full force and effect.

FRANK J. BOWMAN. [SEAL.]
CHARLES GREEN. [SEAL.]
JOHN G. PRIEST. [SEAL.]
GEORGE KNAPP. [SEAL.]

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Now, at this day, the court having fully considered the said appellant's motion for an appeal to the Supreme Court of the State of Missouri from the judgment herein rendered, doth overrule the same.

Bill of exceptions filed.

STATE OF MISSOURI, *ss.*

I, Josiah Thornburgh, clerk of the St. Louis Court of Appeals, certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remain on file and of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 15th day of April, A. D. 1879.

[SEAL.] J. THORNBURGH, *Clk.*

EXHIBIT "B."

In the St. Louis Court of Appeals. March Term, 1879.

IN THE MATTER OF FRANK J. Bowman's Appeal.

Brief for Appellant.

I.

The Constitution of the United States guarantees a republican form of government.

The Fourteenth Amendment to the Constitution of the United States provides:

"Nor shall any state deprive any person of life, liberty, or property, *without due process of law*, nor deny to any person within its jurisdiction the *equal protection* of the laws."

Any form of state government precluding any individual, by name, from seeking redress before the same tribunals provided for furnishing redress to other citizens of the state, would be in violation of the Constitution of the United States, and therefore void.

If the state may not, by name, discriminate against the right of one or more individuals of the state, it may not shut the door of the supreme court of the state to a certain number or designated portion of the citizens of the state, by reason of their living in a particular district or locality within the state.

The right of the people of the state to provide, by constitutional provisions, for the establishment of intermediate appellate courts throughout the state, is unquestionable; but to allow to a large portion of the citizens of the state the remedial right and privilege of a hearing and adjudication of all questions concerning their legal rights and privileges, before the supreme court of the state, and deny to other citizens of the state the same privilege, is in plain violation of the fundamental principle of perfect equality, recognized and guaranteed by the provisions of the Constitution of the United States.

Article 6, sec. 4, Constitution United States.
Budd vs. State, 3 Humphreys, 490.
Article 14, sec. 1, Constitution United States.
2 Yerg., 270, and 10 Yerg., 59.
State Bank vs. Cooper, Special Court at Nashville, 2 Yerg., 599.

If, for argument's sake, we should admit that which appellee's counsel contend, viz: that there are involved in this case none of those questions, which, under the provisions of article 6, section 12, of the state constitution, give a specific right of appeal; we would then have presented a case, in which the defendant, owing to the fact of his residing in a certain locality in the state, is deprived of the right and privilege of having a case, involving to him the most serious consequences, heard or adjudicated upon by the supreme court, when at the same time, any attorney residing in a different portion of the state, would have the right of an appeal to the supreme court, even in the most trifling case of a temporary suspension from the enjoyment of his rights and privileges as an attorney.

Article 6, sec. 2, Constitution of Missouri.

It cannot be answered that the right and privilege of a hearing before the St. Louis Court of Appeals, is a full equivalent for the attempted deprivation of a hearing before the supreme court of the state, for the superiority of the wisdom and power of the latter is recognized in the constitution itself, by giving to it superintending control over all other state courts; and in cases involving large sums of money, and the construction of constitutional and other difficult and important questions, a right of appeal from the St. Louis Court of Appeals.—(See sections 3 and 12, of Article 6, Constitution of Missouri.)

The duty of the state, under a republican form of government, to give *equal remedial rights*, is as imperative as that it impose *equal* burdens and obligations upon its citizens.

Vanzant vs. Waddel, 2 Yerg., 270.
Reynolds vs. Baker, 6 Cold., 221, 228.

It is, therefore, respectfully submitted, in support of the application for an appeal in this case, that the right to such appeal exists and is guaranteed by virtue of the several constitutional provisions referred to, and that any and all restrictions, which it is by appellees claimed and contended, have been placed thereon, are nugatory and void, as being in violation of the provisions of the Constitution of the United States, which have been herein cited to the attention of the court.—(*Supra.*)

* * * * * * * * *

Respectfully submitted,

FRANK J. BOWMAN, *per se.*

WAGNER, DYER & EMMONS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. OCTOBER TERM, 1879.

STATE OF MISSOURI, EX. REL., FRANK J. BOWMAN, *Plaintiff in Error.*

vs.

EDW. A. LEWIS, ET AL., JUDGES OF THE ST. LOUIS COURT OF APPEALS, *Defendants in Error.*

WRIT OF ERROR.

TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

DAVID WAGNER,
of Counsel.

FRANK J. BOWMAN,
pro se.

Times Ptg House, St. Louis.

SUPREME COURT OF THE UNITED STATES.

No. ____ OCTOBER TERM, 1879.

STATE OF MISSOURI, EX. REL., FRANK J. BOWMAN, *Plaintiff in Error.*

vs.

EDW. A. LEWIS, ET AL., JUDGES OF THE ST. LOUIS COURT OF APPEALS, *Defendants in Error.*

WRIT OF ERROR.

TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT.

The main question involved in this cause is, whether certain provisions of the Constitution of Missouri, establishing the St. Louis Court of Appeals, *and limiting the right of appeal therefrom*, are repugnant to the provisions of the Constitution of the United States?

By plaintiff in error it is so affirmed.

The Constitution of the State of Missouri declares that "All writs and process shall run, and all prosecutions shall "be conducted in the name of the 'State of Missouri;' etc." Section 38, Art. 6, title "Judicial Department."

Wagner's Missouri Statutes, Chapter 12, title "Attorneys at Law," contains the following provisions:

"SECTION 6. Any attorney or counsel or at law, who shall be guilty of any felony or infamous crime, or improperly retaining his client's money, or of any malpractice, deceit or misdemeanor in his professional capacity, may be removed or suspended from practice, upon charges exhibited and proceedings thereon had, as hereinafter provided."

"SECTION 15. When the matter charged is not indictable, a trial of the facts alleged shall be had in the court in which the charges are pending, which trial shall be by a jury; or, if the accused, being served with process, fail to appear, or, appearing, does not require a jury, by the court.

SECTION 16. In all cases of conviction, the court shall pronounce judgment of removal or suspension according to the nature of the facts found.

SECTION 17. In all cases of a trial of charges in the Circuit Court the defendant may except to any decision of the court, and may prosecute an appeal, or writ of error, in all respects as in actions at law.

SECTION 18. Every judgment or order of removal or suspension, made in pursuance of this chapter, by the Supreme Court, or by any Circuit Court, shall operate, while it continues in force, as a removal or suspension from practice in all the courts of this State."

Under the foregoing statutory provisions in November, 1877, proceedings were instituted in the St. Louis Circuit Court, upon petition, in the form of charges, filed by Jos. G. Lodge *et al.*, "composing the committee of prosecution of the Bar Association, a corporation under the laws of this State," against Frank J. Bowman, an attorney at law, plaintiff in error herein.

In the language of the court, as imbodied in its instructions given at the trial of the cause, "*neither of the charges against the respondent constitute under the law a criminal offense.*"

The judge of the court, before whom the cause was tried, was a member of the plaintiff corporation prosecuting the cause, and liable for costs, and damages, if unsuccessful therein.

The jury, acting under the court's instructions, found adversely to the respondent below, as to several of the charges, but in his favor as to the most serious, *and eleven of the twelve jurymen who tried the cause, asked and petitioned the court, to impose under the circumstances no other penalty than a judgment for costs.*

Judge Wilbur F. Boyle, before whom the cause was tried, disregarding the request of the jury, rendered a judgment disbarring the respondent forever from practicing before any court of record in the State.

From this judgment the respondent below prayed his appeal, and by his counsel presented a true bill of exceptions, and asked that the same be allowed, and signed by the judge, in manner as by law provided.

Without the knowledge, or assent of the respondent below, the judge before whom the cause was tried, illegally and improperly struck from the bill of exceptions, after the same was presented to him for his signature thereto, thirty-two of the most important exceptions taken to his rulings, and attempted thereby to deprive respondent of the right to have the same reviewed on appeal.

Respondent below after discovering the striking out of his exceptions, in manner as above stated, applied to the St. Louis Court of Appeals, where the cause was then pending on appeal, for a correction of the record, which application was refused on the ground that it was too late to correct the same.

Under these circumstances the judgment of the St. Louis Circuit Court was affirmed, by the judgment of the St. Louis Court of Appeals, *each of the judges of that court being at the time members of the corporation plaintiff in the cause.*

An appeal was thereupon prayed in due and proper form, an appeal bond properly executed, with good and sufficient sureties, was tendered, and each step necessary for the perfecting of an appeal duly taken, but the appeal prayed was by the judges of the Court of Appeals refused and denied.

(For a full verification of each of the foregoing statements, see the certified record of the proceedings in said cause, made part of the record herein.)

The plaintiff in error herein then applied, in due and proper form, by petition filed in the Supreme Court of the State of Missouri, in manner as by the laws of the State of Missouri provided, for a writ of mandamus, directed to the judges of the said Court of Appeals, directing and requiring them to allow the appeal as prayed for, or show cause why the same should not be granted.

Thereafterwards the Supreme Court of the State of Missouri rendered its final judgment, refusing said application, expressing its opinion in words as follows:

"The alternative writ is denied, because we regard the case as one in which no appeal lies from the St. Louis Court of Appeals to this court, the St. Louis Court of Appeals being the court of last resort.

We are of opinion, that no provision of our State Constitution with respect to appeals and writs of error from the St. Louis Court of Appeals to this court conflicts with the XIVth Amendment to the Constitution of the United States, or any other provision of that instrument."

Thereupon, in manner as provided by the statutes of the United States, the plaintiff in error herein, sued out his writ

of error to this honorable court, which writ was by the Chief Justice of the State of Missouri duly approved, bonds for cost and supersedeas given and approved, and notice as required by law served upon the said judges of the Court of Appeals, respondents herein.

THE LAWS AND CONSTITUTIONAL PROVISIONS OF THE STATE OF MISSOURI,

the consideration of which are involved herein, are as follows: The Constitution of Missouri adopted Oct. 30, 1875, contains the following provisions: Article 6 (title).—Judicial Department.

"SECTION 1. The judicial power of the State, as to matters of law and equity, except as in this Constitution otherwise provided, shall be vested in a Supreme Court, the St. Louis Court of Appeals, circuit courts, criminal courts, probate courts, county courts, and municipal corporation courts.

SEC. 2. The Supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, *under the restrictions and limitations in this Constitution provided.*

SEC. 3. The Supreme Court shall have a general superintending control over all inferior courts It shall have power to issue writs of *habeas corpus, mandamus, quo warranto, certiorari*, and other remedial writs, and to hear and determine the same."

"SEC. 4. The judges of the Supreme Court shall hold office for the term of three years. The judge oldest in commission shall be the Chief Justice of the court." * * *

"SEC. 5. The Supreme Court shall consist of five judges, any three of whom shall consitute a quorum; and said judges shall be conservators of the peace throughout the State, and shall be elected by the qualified voters thereof."

"SEC. 9. The Supreme Court shall be held at these at of government at such times as may be prescribed by law; and until otherwise directed by law, the terms of said court shall

commence on the third Tuesday of October and April in each year.

SEC. 10. The State shall provide a suitable court-room, at the seat of government, in which the Supreme Court shall hold its sessions; also a clerk's office, furnished offices for the judges, and the use of the State library."

"SEC. 12. There is hereby established in the city of St. Louis an appellate court, to be known as the St. Louis Court of Appeals, the jurisdiction of which shall be co-extensive with the city of St. Louis, and the counties of St. Louis, St. Charles, Lincoln and Warren. Said court shall have power to issue writs of *habeas corpus*, *quo warranto*, *mandamus*, *certiorari*, and other original remedial writs, and to hear and determine the same, and shall have a superintending control over all inferior courts of record in said counties. Appeals shall lie from the decisions of the St. Louis Court of Appeals to the Supreme Court, and writs of error may issue from the Supreme Court to said court, *in the following cases only:* In all cases where the amount in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars; in cases involving the construction of the Constitution of the United States or of this State, in cases where the validity of a treaty or statute of, or authority exercised under, the United States is drawn in question; in cases involving the construction of the revenue laws of this State, or the title to any office under this State; in cases involving title to real estate; in cases where a county or other political subdivison of this State or any State officer is a party, and in all cases of felony.

SEC. 13. The St. Louis Court of Appeals shall consist of three judges, to be elected by the qualified voters of the city of St. Louis and the counties of St. Louis, St. Charles, Lincoln, and Warren, who shall hold their offices for the period of twelve years. They shall be residents of the district composed of said counties, and shall possess the same qualifications as judges of the Supreme Court, and each shall receive

the same compensation as is now, or may be, provided by law for the judges of the Circuit Court of St. Louis county, and be paid from the same sources: *Provided* that each of said counties shall pay its proportional part of the same according to its taxable property." (See Note 1, Appendix.)

"SEC. 19. All cases which may be pending in the Supreme Court at St. Louis at the time of the adoption of this constitution, which by its terms would come within the final appellate jurisdiction of the St. Louis Court of Appeals, shall be certified and transferred to the St. Louis Court of Appeals, to be heard and determined by said court."

"SEC. 21. Upon the adoption of this Constitution, and after the close of the next regular terms of the Supreme Court at Saint Louis, and Saint Joseph, as now established by law, the office of the clerk of the Supreme Court at Saint Louis and Saint Joseph shall be vacated, and said clerks shall transmit to the clerk of the Supreme Court at Jefferson City all the books, records, documents, transcripts, and papers, belonging to their respective offices, *except* those *required by section nineteen of this article to be turned over to the Saint Louis Court of Appeals;* and said records, documents, transcripts, and papers shall become part of the records, documents, transcripts, and papers of said Supreme Court at Jefferson City, and said court shall hear and determine all the cases thus transferred as other cases."

"SEC. 27. The Circuit Court of Saint Louis County shall be composed of five judges, and such additional number as the General Assembly may from time to time provide. Each of said judges shall sit separately for the trial of causes and the transaction of business in special term. The judges of said Circuit Court may sit in general term, for the purpose of making rules of court, and for the transaction of such other business as may be provided by law, at such time as they may determine, but shall have no power to review any order, decision, or proceeding of the court in special term. The Saint Louis Court of Appeals shall have exclusive jurisdiction of all appeals from, and writs of error to the Circuit

Courts of Saint Charles, Lincoln, and Warren counties, and the Circuit Court of Saint Louis county in special term, and all courts of record having criminal jurisdiction in said counties."

An act of the Legislature of Missouri, approved February 16th, 1877, provides that

"SECTION 1. *Every person aggrieved by any final judgment or decision of any Circuit Court, or the St. Louis Court of Appeals, may make his appeal to the Supreme Court in any civil case.*"

BRIEF AND ARGUMENT.

POINTS.

I. The opinion rendered by the Supreme Court of Missouri, as set forth in the record, shows that the plaintiff in error relied upon and asserted his right of appeal from the St. Louis Court of Appeals, on the ground that the provisions of the Constitution of Missouri limiting appeals from that court, were in violation of the Fourteenth Amendment, and other provisions, of the Constitution of the United States.

"The jurisdiction and duty of this court to review the judgment of the State court on those questions is clear and imperative."

Opinion of the court in Slaughter House cases, 16 Wall., p. 58.

a. This case properly comes here on writ of error.

Memphis *vs.* Brown, 4 Otto, p. 717; 7 Peters, p. 633; 7 Wheaton, p. 534.

Dove *vs.* Ind. School Dist., 41 Iowa, p. 689.

II. The record in this case shows, that in the State of Missouri there is a denial of equal justice before the courts;

remedial rights and privileges granted to a large portion of its citizens are denied to others; the citizens residing in one hundred and nine counties of the State enjoy the right and privilege of an unrestricted appeal to the Supreme Court of the State, and at the same time, in like cases, the right of appeal is denied to the citizens of the State residing in four of the counties in the easterly portion of the State, as also to those residing in the city of St. Louis. (See statement *supra*.)

It cannot be answered that the right and privilege of a hearing before the St. Louis Court of Appeals is a full equivalent for the deprivation of a hearing before the Supreme Court of Missouri, for the superiority of the wisdom and power of the latter, is recognized in the State Constitution, by giving to it superintending control over all other State courts, and in some instances a right of appeal from the St. Louis Court of Appeals.

The duty of the State, under a republican form of government, to give *equal remedial rights*, is as imperative as that it impose *equal* burdens and obligations.

Vanzant *vs.* Waddell, 2 Yerg., p. 270.
Reynolds *vs.* Baker, 6 Cold., pp. 221, 228.
Walley's Heirs *vs.* Kennedy, 2 Yerg., p. 552.

In Vanzant *vs.* Wadell above cited Judge Catron says:

"Every partial or private law, which directly proposes to destroy or effect individual rights, *or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void.*"

This language is quoted, and the principle affirmed, in case of State Bank *vs.* Cooper *et al.*, 2 Yerg., p. 621. In this case, which is directly in point, the court says: "Two important privileges, the trial by jury and the *right of appeal*, are by this act taken away in these special cases, while every other member of the community having incurred similar liabilities enjoys them."

a. The plaintiff in error as the defendant in a cause instituted by private parties before the St. Louis courts—although declared by the court not guilty of any criminal offence—was by the judgment rendered against him (by judges, members of the private corporation plaintiff in the cause) disbarred forever from practicing his profession as an attorney at law before any of the courts in that State, and it is sought to extend the effects of that judgment even to this high court. The sole means of earning his livelihood, and that of his family, thus taken from him; deprived unjustly, as he believes, of the right of practicing a profession that cost him years of hard study, and nights of toil, at a time when, as appears by affidavits preserved in the record, the privilege of practicing his profession had become, of the value of thousands of dollars to him, he prayed his appeal in due form from the decision of the tribunal, that he had reason to believe was not impartial in its judgment; but his appeal is denied on the sole ground that, by reason of his being a resident in a prescribed district of the State, that includes the city of St. Louis, he has in consequence of his residence there, no right of appeal to the Supreme Court of the State.

Any other attorney residing in any of the one hundred and nine privileged counties of the State could have appealed a similar cause to the Supreme Court of the State, however trifling the judgment; or any granger litigant in those counties might appeal a suit to the highest tribunal of the State, although involving but the value of an untanned sheep skin.

Although forced, as a tax-payer in the State to support, by payment of his State taxes, the Supreme Court, with all its incidental expenses, yet the door of the Supreme Court of his State is shut, and barred against him by the provision of the State Constitution establishing unjust discrimination between the citizens of the different portions of the State.

Do not these facts present such a case "*of State oppression by denial of equal justice in its courts*" as claims such attention, as it has been intimated by this court it will, on proper occasion, give to so serious and important a question?

See opinion of the court, Slaughter House Cases, 16 Wall., p. 81.

Any form of State government precluding any *individual by name*, from seeking redress, before the same tribunals provided for furnishing redress to other citizens of the State, would be in violation of the Constitution of the United States, and therefore void.

If the State may not, *by name*, discriminate against the right of one or more individuals of the State, it may not shut the door of the Supreme Court of the State to a certain number, or designated portion of the citizens of the State, by reason of their living in a particular district or locality within the State.

The right of the people of the State to provide, by constitutional provisions, for the establishment of intermediate appellate courts throughout the State, is unquestionable; but to allow to a large portion of the citizens of the State the remedial right and privilege, of a hearing and adjudication of all questions concerning their legal rights and privileges, before the Supreme Court of the State, and deny to other citizens of the State the same privilege, is in plain violation of the fundamental principle of perfect equality, recognized and guaranteed, by the provisions of the Constitution of the United States.

Art. 4, Sec. 4, Const. U. S.

14th Amend. Const. U. S.

Budd *vs.* State, 3 Humphreys, 490; 2 Yerg., 270; Jones *vs.* Perry, 10 Yerg., 59.

State Bank *vs.* Cooper, Special Court at Nashville, 2 Yerg., 599.

III. The provisions of the Constitution of Missouri herein complained of are without precedent; in no other State constitution now in force can any similar provision be found.

The Missouri Constitution of 1875 is the first and only attempt ever made in the United States to deprive, by State constitutional provision, a portion of the citizens of a State of equal remedial rights before the highest judicial tribunal of the State. This fully appears from a careful inspection of the constitutions of the several States. (See Appendix to Brief.)

The attempt has never been made in either of the States of New York, Pennsylvania, Maryland, Illinois or Ohio, in which States are situate the cities of New York, Philadelphia, Baltimore, Chicago and Cincinnati, to discriminate against citizens residing in those Cities, but an equal right of appeal to the highest court of the State of which they respectively form a part, is secured to them when, in like cases, given to other citizens of the State. (See Appendix, pages 1 and 2.)

In Missouri it is attempted by constitutional provision to eliminate from the State, so far as the equal exercise of judicial power is concerned, the whole city of St. Louis and four adjacent counties.

(See provisions of Const. of Mo., set forth in Statement.)

IV. "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Fourteenth Amendment Const. U. S.)

If the plaintiff in error was of African descent, and the constitution of Missouri prohibited any negro from appealing to the Supreme Court of the State for a redress of injuries, we apprehend no doubt would be entertained that such a provision was a denial of the "equal protection of the laws" and

in violation of the Fourteenth Amendment of the Constitution of the United States, and this court would not hesitate to so decide.

"*We do not say that no one else but the negro can share in this protection.* Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly while negro slavery alone was in the mind of Congress which proposed the thirteenth article, it forbids any kind of slavery, now or hereafter. If Mexican peonage, or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. *And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent.*"

Opinion of the court by Mr. Justice Miller, 16 Wall., p. 72.

The discrimination complained of in this case is not against the negro, but is against a class or portion of the citizens of the State of Missouri, equally entitled to protection from wrongful and unconstitutional discrimination, and oppression of the dominant majority; the citizens of St. Louis are clearly entitled to as full a protection of their constitutional rights of equality before the courts of the State as though of African descent. To contend otherwise, and insist that protection of the constitutional right of equality before the law was alone guaranteed to persons of African descent by the adoption of the Fourteenth Amendment, would lead to the inconsistent conclusion, that the very amendment of the constitution which sought to establish *equality before the law*, established inequality, by giving preference to the rights of the negro, in affording them a superior protection.

The weight of authority, and sound reason, seems to establish, beyond dispute, the true ground of interpretation to be, that while the immediate object in view in the adoption of the Fourteenth Amendment was the protection of the negro, *yet* like all things really good and valuable, *it extends to the common benefit of all*; it sets up an additional constitutional barrier against the oppressions of majorities—often to be more dreaded, if unchecked, than the despotic power of kings, and emperors.

Should any class organization—at any time become so powerful as to have absolute control of the State, and unwisely determine to place the whole burden of supporting the State government upon the city of St. Louis, its merchants, and manufacturers, and at the same time deprive them of the right and privilege of having their private injuries redressed before the courts, will any one contend that, under such circumstance, upon a case properly presented, this court would be powerless to give redress?

In the case now before the court it is shown, that while the burden of supporting the Supreme Court is borne equally by the people of St. Louis, equal privileges therein are denied them. The Court of Appeals does not in any proper sense take the place of a supreme court, it is but a local, inferior court, supported and maintained not by the State, but by the district over which its jurisdiction extends. (See Note 1, Appendix.)

V. By the fourth section, of the fourth article, of the Constitution of the United States, a *republican form of government* is guaranteed to every State in this union.

a. "*The equality of the rights of citizens is a principle of republicanism.* Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle if within its power. The duty was originally as-

sumed by the States, and it still remains there. *The only obligation resting upon the United States, is to see that the States do not deny that right.*"

Opinion of the court by Mr. Chief Justice Waite, United States *vs.* Cruikshank *et al.*, 2 Otto, 555.

b. "The Fourteenth Amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another, it simply furnishes *an additional guaranty against any encroachments by the States upon the fundamental rights which belong to every citizen as a member of society.* As was said by Mr. Justice Johnson, in *Bank of Columbia* vs. *Okeley*, 4 Wheaton, 244, "It secures the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice." (See case last cited.)

c. In the case of Munn *vs.* Illinois, this court says: "It is apparent that down to the time of the adoption of the Fourteenth Amendment, it was not supposed that States regulating the use, or even the price of the use, of private property, necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular, it simply *prevents the States from doing that which will operate as such deprivation.*" 4 Otto, p. 125.

It is in conclusion respectfully submitted—that the organization of the St. Louis Court of Appeals, and the limitation of the right of appeal therefrom, is in violation of the Constitution of the United States, for the following reasons:

First. It violates the first fundamental principle of a republican form of government: equality before the law, and impartial administration of the law.

Second, It denies the "equal protections of the law" to the citizens of the State and United States, and is therefore repugnant to, and inconsistent with, the provisions of the Federal Constitution.

Respectfully submitted by

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of Counsel.

FRANK J. BOWMAN,
pro se.

APPENDIX.

CONSTITUTIONAL PROVISIONS NOW IN FORCE.

CONSTITUTION OF THE STATE OF NEW YORK.

The Constitution of 1846 provided for a "Court of Appeals," and a "Supreme Court" having general jurisdiction in law and equity; and that "The State shall be divided into eight judicial districts, of which the city of New York shall be one."

It was further provided that, "There shall be four justices of the Supreme Court in each district, and as many more in the district composed of the city of New York as may, from time to time, be authorized by law, but not to exceed, in the whole, such number in proportion to its population as shall be in conformity with the number of such judges in the residue of the State in proportion to its population." The Superior Court of the City of New York, the Court of Common Pleas for the city and county of New York, the Superior Court of Buffalo and the City Court of Brooklyn were continued, and the Legislature were given power to regulate the jurisdiction and proceedings in law and equity, and to provide "For the allowances of writs of error and appeals to the Court of Appeals from the judgments and decrees of the present Court of Chancery and Supreme Court, and of the courts that may be organized under this Constitution."

See Art. 6, Const. of N. Y., 1846.

By the amendments to the Constitution of 1846, adopted in 1869, the "Court of Appeals" of the State of New York was reorganized, and the Supreme Court was continued—"With general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law."

The Superior Court of the city of New York, the Court of Common Pleas of the city and county of New York, the Superior Court of Buffalo and the City Court of Brooklyn were continued with the powers they then severally had, and with "Such further civil and criminal jurisdiction as may be conferred by law." And it was further provided that, "The Legislature may authorize the judgments, decrees, and decisions of any court of record of original civil jurisdiction, established in a city, to be removed for review directly into the Court of Appeals."

See Sections 2, 6, 12 and 22, Article 6, Amendments of 1869,

PENNSYLVANIA.

By the Constitution of this State, adopted in 1873, courts of common pleas of general jurisdiction were continued throughout the State; four such courts were established in the county of Philadelphia, and designated as common pleas number one, number two, number three, and number four; and two similar courts in the county of Alleghany, designated as common pleas number one and number two; and it was provided that, "The jurisdiction of the Supreme Court shall extend over the State, etc., * * * and they shall have appellate jurisdiction by appeal, *certiorari*, and writ of error, as is now or may hereafter be provided by law." And it is further expressly declared that, "All laws relating to courts shall be general and of uniform operation," etc.

See Sections 3 and 26, Article 5, Const. of Pa., 1873.

MARYLAND.

The Constitution of the State of Maryland, adopted in 1867, designates the city of Baltimore as the "Eighth Judicial Circuit" of the State.

By constitutional provision there is established a "Supreme Bench of Baltimore City," with authority to hear motions for new trials, motions in arrest of judgments, and upon matters of law, but with the express provision that, "The same right of appeal to the Court of Appeals shall be allowed from the determination of the said court of such matters as would have been the right of the parties if said matters had been decided by the court in which said causes were tried."

It is by this constitution declared that the jurisdiction of the "Court of Appeals" shall be co-extensive with the limits of the State, "and such as now is or may hereafter be prescribed by law."

See Article 4, Const. of Md., 1867.

ILLINOIS.

The Constitution of 1870, declares that, "The county of Cook shall be one judicial circuit."

"All laws relating to courts shall be general, and of uniform operation," etc.

"After the year of our Lord 1874 inferior appellate courts, of *uniform organization and jurisdiction*, may be created," etc.

"The Supreme Court shall consist of seven judges, and shall have original jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus*, and appellate jurisdiction in all other cases."

See Sections 2, 11, 23 and 29, Article 6, Const. of Ill., 1870.

OHIO.

The Constitution of 1851 provides that, "The State shall be divided into nine common pleas districts, of which the county of Hamilton shall constitute one."

"District courts shall be composed of the judges of the courts of common pleas of the respective districts and one of the judges of the Supreme Court."

To the Supreme Court is given, "Original jurisdiction in *quo warranto*, *mandamus*, *habeas corpus* and *procedendo*, and such appellate jurisdiction as may be provided by law."

Art. 4, Const. Ohio, 1851.

THE CONSTITUTION OF MASSACHUSETTS,

Adopted in 1780, provides that the Senate and Legislature shall constitute "The General Court of Massachusetts," and to it is given, "Full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth for hearing, trying and determining of all manner of crimes, offenses, pleas processes, plaints, actions, matters, causes," etc. The Constitution of New Hampshire, adopted in 1792, contains a similar provision.

THE CONSTITUTION OF GEORGIA,

Adopted in 1868, provides that "The Supreme Court shall have no original jurisdiction, but shall be a court alone, for the trial and correction of errors from the Superior Courts, and from the City Courts of Savannah and Augusta, and such other like courts as may hereafter be established in other cities."

THE CONSTITUTION OF MISSISSIPPI,

Adopted in 1868, provides only that, "The Supreme Court shall have no jurisdiction except such as properly belongs to a Supreme Court."

Sec. 4, Art. 6, Const. Miss. 1868.

THE CONSTITUTIONS of INDIANA, 1851; KANSAS, 1859; ARKANSAS, 1874; ALABAMA, 1875; COLORADO, 1876; each contains the express provision that the jurisdiction of the Supreme Court *shall be co-extensive with the State*, and shall possess such appellate jurisdiction as may be prescribed by law.

THE CONSTITUTIONS of CALIFORNIA, 1849, AMENDMENTS of 1862; NEVADA, 1864; LOUISIANA, 1868; VIRGINIA, 1870; AND WEST VIRGINIA, 1872; each prescribe limits to the appellate jurisdiction of the Supreme Court, but such limitations are made to apply equally throughout the entire State.

THE CONSTITUTION OF CONNECTICUT,

Adopted in 1818, established a "Supreme Court of Errors," and provided that its jurisdiction "shall be prescribed by law."

THE CONSTITUTION OF DELAWARE,

Adopted in 1831, provides for a "Court of Errors and Appeals," empowered "To issue writs of error to the Superior Court, and to receive appeals from the Court of Chancery, and to determine finally all

matters in error in the judgments and proceedings of said Superior Court, and all matters of appeal in the interlocutory or final decrees and proceedings in Chancery."

THE CONSTITUTION OF FLORIDA, 1868.

As amended in 1875, provides that, "The Supreme Court shall have appellate jurisdiction in all cases at law, and in equity commenced in Circuits Courts, and of appeal from the Circuit Court in cases arising in the County Court as a Court of Probate, and in the management of the estates of infants, and in all criminal cases commenced in the Circuit Court." Power is given to issue "All writs necessary or proper to the complete exercise of its jurisdiction."

Sec. 5, Art. 4, Amendments 1875.

THE CONSTITUTION OF KENTUCKY,

Adopted in 1850, provides for a Supreme Court, to be styled the "Court of Appeals," with "Appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations not repugnant to this constitution as may, from time to time, be prescribed by law."

Sec. 2, Art. 6, Const. Ky., 1850.

THE CONSTITUTION OF IOWA,

Adopted in 1857, provides that, "The Supreme Court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the State."

Sec. 4, Art. 5, Const. of Iowa, 1857.

THE CONSTITUTION OF MAINE,

Adopted in 1820, declares that, "The judicial power of this State shall be vested in a supreme judicial court, and such other courts as the Legislature shall, from time to time, establish;" the extent of their jurisdiction is not defined.

Sec. 1, Art. 6, Const. Me., 1820.

THE CONSTITUTION OF MICHIGAN,

Adopted in 1850, establishes a Supreme Court, with a general superintending control over all inferior courts, and an unlimited appellate jurisdiction.

THE CONSTITUTION OF MINNESOTA,

Adopted in 1857, establishes a Supreme Court, and provides that it shall possess "Original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in cases both in law and equity."

THE CONSTITUTION OF NEBRASKA,

Adopted in 1875, establishes a Supreme Court, with such appellate jurisdiction as may be provided by law; and provides that, "All laws relating to courts shall be general and of uniform operation," etc.

Sec. 19, Art. 6, Const. Nebraska, 1875.

THE CONSTITUTION OF NEW JERSEY,

Adopted in 1844, contains the provision that, "Final judgments in any circuit court may be brought by writ of error into the Supreme Court, or directly into the Court of 'Errors and Appeals.'" Appeals from the "Orphans' Court" are taken directly to the "Perrogative Court."

THE CONSTITUTION OF NORTH CAROLINA,

Adopted in 1876, provides for a Supreme Court that shall have supervisory control over all inferior courts, with "Jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference."

See Sec. 8, Art. 4, Const. of N. C., 1876.

THE CONSTITUTION OF OREGON,

Adopted in 1857, provides that, "The Supreme Court shall have jurisdiction only to revise the final decisions of the circuit courts."

Sec. 6, Art. 7, Const. of Oregon.

THE CONSTITUTION OF RHODE ISLAND,

Adopted, in 1842, provides that, "The several courts shall have such jurisdiction as may, from time to time, be prescribed by law. Chancery powers may be conferred on the Supreme Court, but on no other court to any greater extent than is now provided by law."

Sec. 2, Art. 10, Const. R. I.

THE CONSTITUTION OF SOUTH CAROLINA,

Adopted in 1868, contains the following provision:

"The Supreme Court shall have appellate jurisdiction only in cases of Chancery, and shall constitute a court for the correction of errors at law, under such regulations as the General Assembly may by law provide; Provided, the said court shall always have the power to issue writs of injunction, *mandamus*, *quo warranto*, *habeas corpus*, and such other original and remedial writs as may be necessary to give it a general supervisory control over all other courts in the State."

Sec. 4, Art. 4, Const. S. C.

THE CONSTITUTION OF TENNESSEE,

Adopted in 1870, re-established the Supreme Court of the State, and provided that its jurisdiction should be appellate only, under such restrictions and regulations as "may from time to time be prescribed by law;" as also that it may possess "such other jurisdiction as is now conferred by law on the present Supreme Court."

Sec, 2, Art 6, Const. Tenn.

THE CONSTITUTION OF TEXAS,

Adopted in 1876, established a Supreme Court, with "Appellate jurisdiction only, which shall be co-extensive with the limits of the State, but shall only extend to civil cases of which the district courts have original or appellate jurisdiction;" and a "Court of Appeals, with appellate jurisdiction co-extensive with the limits of the State, in all criminal cases of whatever grade, and in all civil cases, unless hereafter otherwise provided by law, of which the county courts have original or appellate jurisdiction."

Secs. 3 and 6, Art. 5, Const. Texas.

THE CONSTITUTION OF VERMONT,

Adopted in 1793, provided that, "Courts of justice shall be maintained in every county in this State, and also in new counties when formed; which courts shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay."

Sec. 4, Chapt. 2, Const. Vt.

THE CONSTITUTION OF WISCONSIN,

Adopted in 1848, provides that, "The judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme Court, Circuit Courts, Courts of Probate, and Justices of the Peace." It further provides that "The Supreme Court, except in cases otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State; but in no case removed to the Supreme Court shall a trial by jury be allowed. The Supreme Court shall have a general superintending over all inferior courts; itshall have power to issue suits of *habeas corpus*, *mandamus*, injunction, *quo warranto*, *certiorari*, and other original and remedial suits, and to hear and determine the same."

Secs. 2 3, Art. 7, Const. Wis.

NOTE 1.

The judges of the Supreme Court of Missouri receive under the provisions of an act approved Jan. 24, 1870, out of the State treasury, a salary of four thousand five hundred dollars each, and all expenses of the court are paid by the State. The judges of the St. Louis Circuit Court receive out of the State treasury, a yearly salary of two thousand dollars each, and under the act of the Legislature, approved 1869, an additional *twenty-five hundred dollars each out of the county treasury of the county of St Louis.*

By an act approved March 13, 1877, it was provided that the portion of the salaries of the judges of the St. Louis Court of Appeals required by law to be paid from the district over which its jurisdiction extends, as also the compensation of the marshal and janitor of the court, and all expenses of stationery, fuel, and other things necessary for the use of the court, should be paid by the city of St. Louis, and thereafterwards,

on the thirty-first days of January and July, should be duly apportioned to the counties included within its jurisdiction, who should pay to the treasurer of St. Louis their respective portions.

One week later, on March 20, 1877, another act was passed authorizing the St. Louis Court of Appeals *to appoint a marshal and janitor*, with a provision that the salary of the former should not exceed two thousand dollars per annum, and the latter nine hundred dollars per annum; and it was provided that the marshal and janitor should receive of their respective salaries a one-third out of the State treasury, but no provision is made in the act for the payment of the remaining two-thirds. The emergency clause of the act recites that "The business or the St. Louis Court of Appeals being now carried on at a daily inconvenience to said court, and the suitors therein for want of the legislation hereby intended, an emergency is hereby declared to exist requiring the immediate enforcement of those provisions."

By an act approved April 24, 1877, an official reporter of the St. Louis Court of Appeals is provided for, with an annual salary of two thousand dollars per year, to be apportoined by the court and paid by the district over which the court has jurisdiction.

FILED
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D. W. MIDDLETON, Clerk.

SUPREME COURT

OF THE UNITED STATES.

October Term, 1879. No. 904½.

STATE OF MISSOURI, *ex rel.* FRANK J. BOWMAN, *Plaintiff in Error,*

vs.

EDWARD A. LEWIS *et al.*, JUDGES OF THE ST. LOUIS COURT OF APPEALS, *Defendants in Error.*

WRIT OF ERROR.

To the Supreme Court of the State of Missouri.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

DAVID WAGNER,
Of Counsel for Plaintiff in Error.

ST. LOUIS:
JOHN J. DALY & CO., PRINTERS AND STATIONERS,
1880.

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To the Supreme Court of the State of Missouri.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT.

The main question involved in this cause is, whether certain provisions of the Constitution of Missouri, establishing the St. Louis Court of Appeals, *and limiting the right of appeal therefrom,* are repugnant to the provisions of the Constitution of the United States?

By plaintiff in error it is so affirmed.

Wagner's Missouri Statutes, Chapter 12, title "Attorneys at Law," contains the following provisions:

"SECTION 6. Any attorney or counselor at law, who shall

be guilty of any felony or infamous crime, or improperly retaining his client's money, or of any malpractice, deceit, or misdemeanor in his professional capacity, may be removed or suspended from practice, upon charges exhibited and proceedings thereon had, as hereinafter provided.

"SEC. 15. When the matter charged is not indictable, a trial of the facts alleged shall be had in the court in which the charges are pending, which trial shall be by jury; or, if the accused, being served with process, fail to appear, or, appearing, does not require a jury, by the court.

"SEC. 16. In all cases of conviction, the court shall pronounce judgment, of removal or suspension, according to the nature of the facts found.

"SEC. 17. In all cases of a trial of charges in the Circuit Court, the defendant may except to any decision of the court, and may prosecute *an appeal, or writ of error, in all respects as in actions of law.*

"SEC. 18. Every judgment, or order of removal or suspension, made in pursuance of this chapter, by the Supreme Court, or by any Circuit Court, shall operate, while it continues in force, as a removal or suspension in practice in all the courts of this State."

Under the foregoing statutory provisions, in November, 1877, proceedings were instituted in the St. Louis Circuit Court, upon petition, in the form of charges, filed by Joseph G. Lodge *et al.*, "composing the Committee of Prosecution of the Bar Association, a corporation under the laws of this State," against Frank J. Bowman, an attorney at law, plaintiff in error herein.

In the language of the court, as imbodied in its instructions given at the trial of the cause, "*neither of the charges against the respondent constitute under the law a criminal offense.*"

The judge of the court, before whom the cause was tried, was a member of the plaintiff corporation prosecuting the cause.

The jury, acting under the court's instructions, found adversely to the respondent below, as to several of the charges but in his favor as to the more serious, *and eleven of the twelve jurymen who tried the cause, asked and petitioned the court to impose under the circumstances no other penalty than a judgment for costs.*

Judge Wilbur F. Boyle, before whom the cause was tried, disregarding the request of the jury, rendered a judgment disbarring the respondent forever from practicing before any court of record in the State.

From this judgment the respondent below prayed his appeal, and by his counsel presented a true bill of exceptions, and asked that the same be allowed, and signed by the judge, in manner as by law provided.

Without the knowledge, or assent of the respondent below, the judge before whom the cause was tried, illegally and improperly struck from the bill of exceptions, after the same was presented to him for his signature thereto, thirty-two of the most important exceptions taken to his rulings, and attempted thereby to deprive respondent of the right to have the same reviewed on appeal.

Respondent below, after discovering the striking out of his exceptions, in manner as above stated, applied to the St. Louis Court of Appeals, where the cause was then pending on appeal, for a correction of the record, which application was refused on the ground that it was too late to correct the same.

Under these circumstances the judgment of the St. Louis Circuit Court was affirmed, by the judgment of the St. Louis Court of Appeals, *each of the judges of that court being at the time members of the corporation plaintiff in the cause.*

An appeal was thereupon prayed in due and proper form, an appeal bond properly executed, with good and sufficient

sureties, was tendered, and each step necessary for the perfecting of an appeal duly taken, but the appeal prayed was by the judges of the Court of Appeals refused and denied.

(For a full verification of each of the foregoing statements, see the certified record of the proceedings in said cause, made part of the record herein.)

The plaintiff in error herein then applied, in due and proper form, the petition filed in the Supreme Court of the State of Missouri, in manner as by the laws of the State of Missouri provided, for a writ of mandamus, directed to the judges of the said Court of Appeals, directing and requiring them to allow the appeal as prayed for, or show cause why the same should not be granted.

To this application both parties appeared in the Supreme Court, as will appear from the following entry:

"Now, at this day comes the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the application for an alternative writ of mandamus heretofore filed herein, to the said respondents, the judges of the St. Louis Court of Appeals, be and the same is hereby refused." Printed record, p. 7.

And afterwards, the Supreme Court of the State gave the following opinion as reasons for refusing the said application:

"The alternative writ is denied, because we regard the case as one in which no appeal lies from the St. Louis Court of Appeals to this court, the St. Louis Court of Appeals being the court of last resort.

We are of the opinion, that no provision of our State Constitution with respect to appeals and writs of error from the St. Louis Court of Appeals to this court conflicts with the Fourteenth Amendment of the Constitution of the United States, or any other provision of that instrument."

Thereupon, in manner as provided by the statutes of the United States, the plaintiff in error herein sued out his writ of error to this honorable court, which writ was by the Chief Justice of the State of Missouri duly approved, bonds for cost and supersedeas given and approved, and notice as required by law served upon the said judges of the Court of Appeals, respondents herein. (See Record.)

THE LAWS AND CONSTITUTIONAL PROVISIONS OF THE STATE OF MISSOURI.

The consideration of which are involved herein, are as follows: The Constitution of Missouri adopted October 30, 1875, contains the following provisions: Article 6 (Title—Judicial Department).

"SECTION 1. The judicial power of the State, as to matters of law and equity, except as in this Constitution otherwise provided, shall be vested in a Supreme Court, the St. Louis Court of Appeals, Circuit Courts, Criminal Courts, Probate Courts, County Courts, and Municipal Corporation Courts.

"SEC. 2. The Supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, *under the restrictions and limitations in this Constitution provided.*

"SEC. 3. The Supreme Court shall have a general superintending control over all inferior courts. It shall have power to issue writs of *habeas corpus, mandamus, quo warranto, certiorari,* and other remedial writs, and to hear and determine the same.

"SEC. 4 The judges of the Supreme Court shall hold office for the term of ten years. The judge oldest in commission shall be the Chief Justice of the Court. * * *

"SEC. 5. The Supreme Court shall consist of five judges, any three of whom shall constitute a quorum; and said judges

shall be conservators of the peace throughout the State, and shall be elected by the qualified voters thereof.

"SEC. 9. The Supreme Court shall be held at the seat of government at such times as may be prescribed by law; and until otherwise directed by law, the terms of said court shall commence on the third Tuesday of October and April, in each year.

"SEC. 10. The State shall provide a suitable court room, at the seat of government, in which the Supreme Court shall hold its sessions; also a clerk's office, furnished offices for the judges, and the use of the State library.

"SEC. 12. There is hereby established in the City of St. Louis an appellate court, to be known as the St. Louis Court of Appeals, the jurisdiction of which shall be co-extensive with the City of St. Louis, and the Counties of St. Louis, St. Charles, Lincoln and Warren. Said court shall have power to issue writs of *habeas corpus*, *quo warranto*, *mandamus*, *certiorari*, and other original remedial writs, and to hear and determine the same, and shall have a superintending control over all inferior courts of record in said counties. Appeals shall lie from the decisions of the St. Louis Court of Appeals to the Supreme Court, and writs of error may issue from the Supreme Court to said court, *in the following cases only:* In all cases where the amount in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars; in cases involving the construction of the Constitution of the United States or of this State, in cases where the validity of a treaty or statute of, or authority exercised under, the United States is drawn in question; in cases involving the construction of the revenue laws of this State, or the title of any office under this State; in cases involving title to real estate; in cases where a county or other political subdivision of this State or any State officer is a party, and in all cases of felony.

"SEC. 13. The St. Louis Court of Appeals shall consist of three judges, to be elected by the qualified voters of the

City of St. Louis and the Counties of St. Louis, St. Charles, Lincoln, and Warren, who shall hold their offices for the period of twelve years. They shall be residents of the district composed of said counties, and shall possess the same qualifications as judges of the Supreme Court, and each shall receive the same compensation as is now, or may be, provided by law for the judges of the Circuit Court of St. Louis County, and be paid from the same sources: *Provided* that each of said counties shall pay its proportional part of the same according to its taxable property.

"SEC. 19. All cases which may be pending in the Supreme Court, at St. Louis, at the time of the adoption of this constitution, which, by its terms, would come within the final appellate jurisdiction of the St. Louis Court of Appeals, shall be certified and transferred to the St. Louis Court of Appeals, to be heard and determined by said court.

"SEC. 21. Upon the adoption of this constitution, and after the close of the next regular terms of the Supreme Court at St. Louis, and St. Joseph, as now established by law, the office of the clerk of the Supreme Court at St. Louis and St. Joseph shall be vacated, and said clerks shall transmit to the clerk of the Supreme Court at Jefferson City all the books, records, documents, transcripts, and papers belonging to their respective offices, *except* those *required by section nineteen of this article to be turned over to the St. Louis Court of Appeals;* and said records, documents, transcripts, and papers shall become part of the records, documents, transcripts, and papers of said Supreme Court at Jefferson City, and said court shall hear and determine all the cases thus transferred, as other cases.

"SEC. 27. The Circuit Court of St. Louis Couty shall be composed of five judges, and such additional number as the General Assembly may, from time to time, provide. Each of said judges shall sit separately for the trial of causes, and the transaction of business in special term. The judges of said Circuit Court may sit in general term, for the purpose of

making rules of court, and for the transaction of such other business as may be provided by law, at such time as they may determine, but shall have no power fo review any order, decision, or proceeding of the court in special term. The St. Louis Court of Appeals shall have exclusive jurisdiction of all appeals from, and writs of error to the Circuit Courts of St. Charles, Lincoln, and Warren Counties, and the Circuit Court of St. Louis County in special term, and all courts of record having criminal jurisdiction in said counties."

STATUTE LAWS OF MISSOURI—CONCERNING CIVIL AND CRIMINAL PROCEDURE.

"There shall be, in this State, but one form of aotion for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be denominated a civil action; and the party thereto complaining shall be known as the plaintiff, and the adverse party as the defendant.

Gen. Stat., ch. 1, § 1; Wag. Stat., p. 999, § 1.

The Circuit Courts (and in St. Louis County the Criminal Court) shall have exclusive original jurisdiction in all cases of felony, and of all offenses not herein declared expressly to be cognizable before a justice of the peace, and concurrent jurisdiction with the justices in the cases specified in the twenty-ninth and thirtieth sections of this capter."

General Statutes of Missouri, 1865, chap. 207.

(*Original jurisdiction is given to the St. Louis Circuit Court in civil cases only.*)

"SECTION 27. Whenever, in the progress of any trial, in any civil suit, pending in any court of record, either party shall except to the opinion of the court, and shall write his exception, and pray the court to allow and sign the same, the person composing the court shall, if such bill be true, sign the same.

"SEC. 28. Such exception may be written and filed at the

time, *or during the term of the court at which it is taken*, and not after. All the exceptions taken during the trial of a cause before the same jury, shall be embraced in the same bill of exceptions."

Wagner's Missouri Stat., p. 143, secs. 27, 28.

"Every person aggrieved by any final judgment or decision of any Circuit Court, in any civil case, including cases of contested elections, may make his appeal to the Supreme Court."

Act of February 28, 1871; Wag. Mo. Stat., § 9, p. 159.

"In all cases of final judgment, rendered upon any indictment, an appeal to the Supreme Court [District Court] shall be allowed the defendant, if applied for during the term at which such judgment is rendered."

General Statutes of Missouri, chap. 215, § 1.

An act of the legislature of Missouri, approved February 16, 1877, provides that:

"SECTION 1. *Every person aggrieved by any final judgment or decision of any Circuit Court, or the St. Louis Court of Appeals, may make his appeal to the Supreme Court in any civil case.*"

Acts of Legislature of Missouri, Session 1877.

Upon this record the following errors are assigned:

1st. The court erred in refusing the writ, when it should have granted the same.

2d. The court erred in holding that the denial of the right of appeal, by the St. Louis Court of Appeals, was no violation of the Constitution of the United States.

3d. The court erred in holding that the denial of the right of appeal was not in conflict with the Fourteenth Amendment to the Constitution of the United States.

BRIEF AND ARGUMENT.

POINTS.

I. The opinion rendered by the Supreme Court of Missouri, as set forth in the record, shows that the plaintiff in error relied upon and asserted his rights of appeal from the St. Louis Court of Appeals, on the ground that the provisions of the Constitution of Missouri limiting appeals from that court, were in violation of the Fourteenth Amendment, and other provisions of the Constitution of the United States.

"The jurisdiction and duty of this court to review the judgment of the State court on those questions is clear and imperative."

Opinion of the court in Slaughter House cases, 16 Wall., p. 58.

a. This case properly comes here on writ of error.

Memphis v. Brown, 4 Otto, p. 717; 7 Peters, p. 633; 7 Wheaton, p. 534.

Dove v. Ind. School Dist., 41 Iowa, p. 689.

II. The record in this case shows, that in the State of Missouri there is a denial of equal justice before the courts; remedial rights and priviliges granted to a large portion of its citizen are denied to others; the citizens residing in one hundred and nine counties of the State enjoy the right and privilege of an unrestricted appeal to the Supreme Court of the State, and at the same time, in like cases, the right of appeal is denied to the citizens of the State residing in four of the counties in the easterly portion of the State, as also to those residing in the city of St. Louis. (See statement *supra.*)

It cannot be answered that the right and privilege of a

hearing before the St. Louis Court of Appeals is a full equivalent for the deprivation of a hearing before the Supreme Court of Missouri, for the superiority of the wisdom and power of the latter is recognized in the State Constitution, by giving to it superintending control over all other State courts, and in some instances a right of appeal from the St. Louis Court of Appeals.

The duty of a State under a republican form of government, to give *equal remedial rights*, it is as imperative as that it impose *equal* burdens and obligations.

Article 4, section 4, of the Constitution of the United States, says: "The United States shall guarantee to every State in this Union a republican form of government."

The fourteenth amendment to the Constitution, declares: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*"

The provision in the Missouri Constitution organizing the St. Louis Court of Appeals, is grossly anti-republican and unequal. It denies to a portion of the State, rights and privileges freely accorded to and enjoyed by the balance of the State. Republicanism requires equal rights to all.

"*The equality of the rights of citizens is a principle of republicanism.* Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. The duty was originally assumed by the States, and it still remains there. *The only obligation resting*

upon the United States is to see that the States do not deny that right."

Opinion of the court by Mr. Chief-Justice Waite, United States vs. Cruikshank et al., 2 Otto, 555.

"The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another; it simply furnishes *an additional guaranty against any encroachments by the States upon the fundamental rights which belongs to every citizen as a member of society.* As was said by Mr. Justice Johnson, in *Bank of Columbia* vs. *Okeley*, 4 Wheaton, 244, "It secures the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice." (See case last cited.)

In the case of Munn vs. Illinois, this court says: "It is apparent that down to the time of the adoption of the fourteenth amendment, it was not supposed that States regulating the use, or even the price of the use, of private property, necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular, it simply *prevents the States from doing that which will operate as such deprivation.*"

4 Otto, p. 125.

It is true that Mr. Justice Miller, speaking for a majority of the court in the Slaughter-house cases, 16 Wall, 36, says that the recent amendments to the Constitution were primarily intended to define the rights and protect the negro race, yet he admits that cases may arise where they will have a wider scope and be more comprehensive in their operation.

On page 72, he says:

"*We do not say that no one else but the negro can share in this protection.* Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly, while negro slavery alone was in the mind of Congress which proposed the thirteenth article, it forbids any kind of slavery, now or hereafter. If Mexican peonage, or the Chinese Coolie labor system, shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. *And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent.*"

Partial or private laws, which directly propose to destroy or effect individual rights, or accomplish the same thing, by affording remedies leading to similar consequences, are unconstitutional and void.

In Vanzant v. Waddell, 2 Yerg., 269-270, Catron, J., says: "That a partial law, tending, directly or indirectly, to deprive a corporation or individual of rights to property, or to the equal benefits of the general and public laws of the land, is unconstitutional and void we do not doubt. * * * Our constitution, article 11, section 8, declares that no freeman shall be deprived of his life, liberty, or property but by the judgment of his peers or the law of the land. The clause, law of the land, means a general and public law, equally binding upon every member of the community. * * * * The right to life, liberty, and property of every individual must stand or fall by the same rule of law that governs every other member of the body politic, or law, under similar circumstances; and every partial or private law, which directly proposes to destroy or effect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise,

odious individuals and corporate bodies would be governed by one rule, and the mass of the community, who made the law, by another. The idea of a people, through their representatives, making laws whereby are swept away the life, liberty, and property of one or a few citizens, by which neither the representatives nor their other constituents are willing to be bound, is too odious to be tolerated in any government where freedom has a name."

The same doctrine is reaffirmed and reiterated by the same learned judge, speaking for the court in Wally's Heirs v. Kennedy, 2 Yerg., 554.

In 1829 the Legislature of Tennessee passed an act to organize a special court at Nashville, to hear and determine all cases against the officers of the bank and their sureties, and against persons who had become defaulters in their dealings with the bank. The court was declared to be supreme within its sphere of action, and all appeals from its decisions were prohibited. The Supreme Court, after the most elaborate consideration, held that the act establishing the court was unconstitutional and void, one of the grounds of the decision being that the organization of the court was partial in its operation, and for that reason not a law of the land.

State Bank v. Cooper et al., 2 Yer., 559.

Judge Green, in his opinion, p. 607, said:

"Two important privileges, the trial by jury, and the right of appeal, are by the act taken away in these special cases, while every other member of the community, having incurred similar liabilities, enjoys them."

Said Peck, J., pp. 612-13-14: "But, it may be asked, what are we to infer from all this? I answer, that in looking into the constitution to find the dimensions of *justice*, she is seen laying her hand as well upon the eastern extremity of the State as upon the western. The higher order of courts have a superintending control everywhere. The inferior are supposed to be kept in constant check, and their measure

of justice to each, meted out in uniformity; and while we see this system pervading our whole, we are called upon to notice as well for our own safety, as for the safety of the citizen, within a limited *sphere of action*, a tribunal from which *no appeal lies.* * * * * Is the act upon its face, partial in its provisions, and personal in its application, and affording advantages to one side and withholding them from the other, by such provisions as are found not to apply to other portions of the community, besides those specified in the act? * * * The duty assigned to this court, is aside from the duty belonging to its members as judges; the act relates to the few specially named in it; the rules by which we are to be governed are not those common to the rest of the community; the right of trial by jury is made discretionary, if not absolutely taken away by the act, and the right of appeal is taken away in express terms; under these circumstances, is the law of the land likely to be afforded to the defendants?"

Judge Kennedy also delivers an ably reasoned opinion wherein he indorses in the strongest manner the judgment of the court in Vanzant vs. Waddell; he also quotes approvingly from Blackstone, where the great commentator says that the fundamental principle of municipal law is, that it should be "permanent, uniform and universal."

So in Jones vs. Perry, 10 Yerg., 59, it was held that the term law of the land, meant a general and public law, operating equally upon every member of the community.

To the same purport see Budd vs. the State, 3 Humph, 483; Reynolds vs. Baker, 6 Coldw., 228, and cases cited.

In re Jilz, 3 Mo. App., 245, the very court which denied the appeal in this case says:

"The phrase, 'the law of the land,' and the phrase 'due process of law' have been long the subjects of judicial interpretation, and their meaning is fixed. That a free man

shall not be 'passed upon, or condemned, but by the lawful judgment of his peers and the law of land' is the provision of *Magna Charta*, from which similar declarations are introduced into the Bill of Rights which form a part of the organic law of the Federal Government and of each State of the Union. The 'law of the land' is interpreted to mean a general public law, operating equally upon every member of the community; and every partial law, by which the rights of individuals are abridged or taken away, is held by the courts to be void, as being in violation of this law of the land. * * * A law which should prescribe death as the punishment of murder in one county, and imprisonment as the penalty for the same crime in other parts of the State, would be void, because not operating equally upon all the inhabitants of the State."

This is undoubtedly good law, but it seems a little out of place in the decisions of such a court. Had the court gone a step further in its analogy, and declared that a law which should allow an appeal to the highest court of the State in one county, and deny it in a similar case in another county was void because not operating equally upon all the inhabitants of the State, we might then have conceded that it was pre-eminently entitled to respect.

The provisions of the constitution of Missouri complained of are without precedent; in no other State constitution now in force can any similar provision be found. The Missouri constitution of 1875 is the first and only attempt ever made in the United States to deprive by State constitutional provision, a portion of the citizens of a State of equal remedial rights before the highest judicial tribunal of the State.

It is attempted by constitutional provision to eliminate from the State, so far as the equal exercise of judicial power is concerned, four counties in the state.

This system is unequal and presents an odious discrimination against four counties in the state, by which they are deprived of rights guaranteed to the other one hundred and nine counties. It is not uniform and does not bind the inhabitants of the whole State alike. Not only is this so, but it produces inequality and accords rights to the inhabitants of the four counties, which are denied to other inhabitants who reside in the said counties. Take, for example, a suit commenced in one of the four counties, which is taken by change of venue to an adjoining Circuit. When it gets to that circuit the right to appeal to the highest judicial tribunal is absolute and unrestricted, though the amount in issue is only one dollar, whilst as to other parties who can not obtain a change of venue, they must be content with the decision of an inferior tribunal. Thus, in the same prescribed limits of territory, one class of citizens may appeal to the Supreme Court of the State, whilst other classes of citizens in the same territory, in the same class of actions, are denied the privilege of appeal accorded to the more favored ones.

If this provision can be upheld, what is there to hinder a convention from selecting out one or more counties in the State and saying that from those counties the decisions of the Circuit Courts shall be final, and that appeals shall not lie from them to any appellate tribunal; although from all other counties appeals may be taken?

This disfranchisement of the rights of the few, when equal rights are freely granted to the many, shocks the moral sense of justice, and in the language of Judge Catron, "*is too odious to be tolerated in any government where freedom has a name.*"

Do not these facts present such a case, "*of State oppression by denial of equal justice in its courts*" as claims such attention, as it has been intimated by this court it will, on proper occasion, give to so serious and important a question?

Slaughter-house cases, 16 Wall, p. 81.

The weight of authority, and sound reason, seems to establish, beyond dispute, the true ground of interpretation to be, that while the immediate object in view in the adoption of the fourteenth amendment was the protection of the negro, *yet* like all things really good and valuable, *it extends to the common benefit of all;* it sets up an additional constitutional barrier against the oppressions of majorities—often to be more dreaded, if unchecked, than the despotic power of kings and emperors.

Should any class organization—at any time become so powerful as to have absolute control of the State, and unwisely determine to place the whole burden of supporting the State government upon the City of St. Louis, its merchants, and manufacturers, and at the same time deprive them of the right and privilege of having their private injuries redressed before the courts, will any one contend that, under such circumstances, upon a case properly presented, this court would be powerless to give redress?

In the case now before the court it is shown, that while the burden of supporting the Supreme Court is borne equally by the people of St. Louis, equal privileges therein are denied them. The Court of Appeals does not in any proper sense take the place of a Supreme Court, it is but a local, inferior court, supported and maintained not by the State, but by the district over which its jurisdiction extends.

Any form of State government precluding any *individual by name*, from seeking redress, before the same tribunals provided for furnishing redress to other citizens of the State, would be in violation of the Constitution of the United States and therefore void.

If the State may not, *by name*, discriminate against the right of one or more individuals of the State, it may not shut the door of the Supreme Court of the State to a certain

number, or designated portion of the citizens of the State, by reason of their living in a particular district or locality within the State.

The right of the people of the State to provide, by constitutional provisions, for the establishment of intermediate Appellate Courts throughout the State, is unquestionable; but to allow to a large portion of the citizens of the State the remedial right and privilege, of a hearing and adjudication of all questions concerning their legal rights and privileges before the Supreme Court of the State, and deny to other citizens of the State the same privilege, is in plain violation of the fundamental principle of perfect equality, recognized and guaranteed, by the provisions of the Constitution of the United States.

The plaintiff in error, as the defendant in a cause instituted by private parties before the St. Louis courts—although declared by the court not guilty of any criminal offense—was, by the judgment rendered against him (by judges, members of the private corporation, plaintiff in the cause), disbarred forever from practicing his profession as an attorney at law before any of the courts in that State, and it is sought to extend the effects of that judgment even to this high court. The sole means of earning his livlihood, and that of his family, thus taken from him; deprived unjustly, as he believes, of the right of practicing a profession that cost him years of hard study and nights of toil, at a time when, as appears by affidavits preserved in the record, the privilege of practicing his profession had become of the value of thousands of dollars to him, he prayed his appeal, in due form, from the decision of the tribunal that he had reason to believe was not impartial in its judgment; but his appeal is denied on the sole ground that, by reason of his being a resident in a prescribed district of the State, that includes the City of St. Louis, he has, in consequence of his residence there, no right of appeal to the Supreme Court of the State.

Any other attorney, residing in any of the one hundred and nine privileged counties of the State, could have appealed a similar cause to the Supreme Court of the State, however trifling the judgment; or any granger litigant in those counties might appeal a suit to the highest tribunal of the State, although involving but the value of an untanned sheep skin.

Although forced, as a tax-payer in the State, to support, by payment of his State taxes, the Supreme Court, with all its incidental expenses, yet the door of the Supreme Court of his State is shut and barred against him by the provision of the State Constitution establishing unjust discrimination between the citizens of the different portions of the State.

In conclusion, it is submitted, with the greatest confidence, that the organization of the St. Louis Court of Appeals, and the limitation of the right of appeal therefrom, is in violation of the Constitution of the United States for the following reasons:

First. It violates the first fundamental principle of a republican form of government—equality before the law, and impartial administration of the law.

Second. It denies the "equal protection of the law" to the citizens of the State and the United States; and is, therefore, repugnant to, and inconsistent with, the provisions of the Federal Constitution.

DAVID WAGNER,
Of Counsel for Plaintiff in Error.

OFFICE SUPREME COURT
FILED
FEB 26 1880
D. W. MIDDLETON, Clerk

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1879.

FRANK J. BOWMAN,
Plaintiff in Error,
vs.
EDWARD A. LEWIS ET AL.,
Defendants in Error.
} *No. 904 1-2.*

STATEMENT AND BRIEF FOR DEFENDANTS IN ERROR.

HENRY HITCHCOCK,
CHESTER H. KRUM,
Of Counsel for Defendants in Error.

St. Louis: Press of G. I. Jones & Co.

SUPREME COURT

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FRANK J. BOWMAN,
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vs.

EDWARD A. LEWIS ET AL.,
Defendants in Error.

No. 904 1-2.

STATEMENT.

This is a writ of error to the Supreme Court of the State of Missouri. On April 16, 1879, the plaintiff in error presented to the Supreme Court of the State of Missouri an application for an alternative writ of *mandamus* against the defendants in error, who are the judges of the St. Louis Court of Appeals. The application, which begins on page 3 of the record, was based on the ground that the Court of Appeals had wrongfully and unlawfully refused the applicant an appeal from their affirmance of a judgment of the St. Louis Circuit Court, which removed the applicant from the practice of law because he had been found guilty of

unprofessional conduct and misdemeanor in his professional capacity. *The application contains no claim or suggestion whatever that the constitutional provision under which the Court of Appeals has its origin is repugnant in any particular to the Constitution of the United States.*

The alternative writ thus applied for was refused. Thereupon the plaintiff in error filed a *motion for a rehearing* of his application. In this motion, which is on page 7 of the record, occur these words: "*It is by applicant insisted that such limitation*," [meaning the limitation imposed upon the jurisdiction of the Supreme Court by sect. 12, Art. VI., of the Constitution of Missouri] "*if created by the State Constitution, is in violation of the Fourteenth Amendment of the Constitution of the United States, and other provisions of the United States* GUARANTEEING EQUALITY TO ALL CITIZENS IN THEIR RIGHTS, PRIVILEGES, AND OBLIGATIONS."

This motion also invited the Supreme Court of Missouri to deliver a written opinion, in order that it might appear whether Federal questions were involved in the application.

The opinion of the Supreme Court, in response to this suggestion, is on page 8 of the record, and is as follows: —

"The alternative writ is denied, because we regard the case as one in which no appeal lies from the St. Louis Court of Appeals to this court, the St. Louis Court of Appeals being the court of last resort. *We are of the opinion that no provision of our State Constitution with respect to appeals and writs of error from the St. Louis Court of Appeals to this court conflicts with the Fourteenth Amendment to the Constitution of the United States*, OR ANY OTHER PROVISION OF THAT INSTRUMENT."

Thereupon the present writ of error was sued out to the Supreme Court of Missouri. The provisions of the Constitution of Missouri which are pertinent to the present record are correctly set forth in the statement of plaintiff in error.

The defendants in error call attention to the provisions

of Chap. 12, Wagner's Missouri Statutes, p. 198, under which the proceeding against the plaintiff in error was instituted, which (in full) are as follows: —

"Sect. 1. No person shall practice as an attorney or counsellor at law in any court of record, unless he obtain a license from the Supreme Court or Circuit Court, or some of the judges thereof, in vacation.

"Sect. 2. Every applicant for license to practice law shall produce satisfactory testimonials of good moral character, and undergo a strict examination as to his qualifications by one of the judges.

"Sect. 3. Every person obtaining a license shall take the oath prescribed by the Constitution of this State, and an oath that he will faithfully demean himself in his practice, to the best of his knowledge and ability. A certificate of such oath shall be indorsed on the license.

"Sect. 4. Each clerk shall keep a roll of attorneys, which shall be a record of the court.

"Sect. 5. If any person shall practice law in any court of record without being licensed, sworn, and enrolled, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt.

"Sect. 6. Any attorney or counsellor at law, who shall be guilty of any felony or infamous crime, or improperly retaining his client's money, or of any malpractice, deceit, or misdemeanor in his professional capacity, may be removed or suspended from practice, upon charges exhibited and proceedings thereon had, as hereinafter provided.

"Sect. 7. Such charges may be exhibited, and proceedings thereon had in the Supreme Court, or in the Circuit Court of the county in which the offence shall have been committed or the accused resides.

"Sect. 8. The court in which such charges shall be exhibited shall fix a day for the hearing, allowing a reasonable time, and the clerk shall issue a citation accordingly, with a copy of the charges annexed, which may be served in any county in this State.

"Sect. 9. The copy of the charges and citation shall be served in the same manner as a declaration and summons in civil actions, a reasonable time before the return-day thereof.

"Sect. 10. If the party served with citation shall fail

to appear, according to the command thereof, obedience may be enforced by attachment, or the court may proceed *ex parte*.

"Sect. 11. If the charges allege a conviction for an indictable offence, the court shall, on the production of the record of conviction, remove the person so convicted, or suspend him from practice for a limited time, according to the nature of the offence, without further trial.

"Sect. 12. Upon charges other than in the last section specified, the court shall have power only to suspend the accused from practice, until the facts shall be ascertained in the manner hereinafter prescribed.

"Sect. 13. If the charge be for an indictable offence, and no indictment be found, or being found, shall not be prosecuted to trial within six months, the suspension shall be discontinued, unless the delay be produced by the absence or procurement of the accused, in which case the suspension may be continued until a final decision.

"Sect. 14. The record of conviction or acquittal of any indictable offence shall, in all cases, be conclusive of the facts, and the court shall proceed thereon accordingly.

"Sect. 15. When the matter charged is not indictable, a trial of the facts alleged shall be had in the court in which the charges are pending, which trial shall be by a jury; or if the accused, being served with process, fail to appear, or appearing, does not require a jury, by the court.

"Sect. 16. In all cases of conviction, the court shall pronounce judgment of removal or suspension according to the nature of the facts found.

"Sect. 17. In all cases of a trial of charges in the Circuit Court the defendant may except to any decision of the court, and may prosecute an appeal or writ of error in all respects as in actions at law.

"Sect. 18. Every judgment or order of removal or suspension, made in pursuance of this chapter, by the Supreme Court, or by any Circuit Court, shall operate, while it continues in force, as a removal or suspension from practice in all the courts of this State."

Attention is also called to the following provisions of Art. III. of the Missouri Act concerning practice in civil cases (2 Wag. Mo. Stats. p. 1005), being all which relate to the jurisdiction of Circuit Courts, as regards

"THE PLACE WHERE SUITS ARE TO BE BROUGHT."

"Sect. 1. Suits instituted by summons shall, except as otherwise provided by law, be brought: first, when the defendant is a resident of the State, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found; second, when there are several defendants, and they reside in different counties, the suit may be brought in any such county; third, when there are several defendants, some residents, and others non-residents, of the State, suit may be brought in any county in which any defendant resides; fourth, when all the defendants are non-residents of the State, suit may be brought in any county.

"Sect. 2. Suits commenced by attachment against the property of a person, shall be brought in the county in which such property may be found.

"Sect. 3. Suits for the possession of real estate, or whereby the title thereto may be affected, shall be brought in the county within which such real estate, or some part thereof, is situated.

"Sect. 4. If, at any time after the commencement of a suit, the parties shall agree, in writing, duly filed, upon any other county or court of competent jurisdiction, to which they desire the same to be removed, it shall, by order of the court, be removed accordingly to such county or court of competent jurisdiction; and the same proceedings shall be had, in all respects, for the removal of such cause, as are provided, by law, in changes of venue in civil cases."

If the record were in such condition that the plaintiff in error could raise the question upon which he now relies, and had his statement been limited to placing before this court only such assertions as to facts in his case as were necessary to bring that solitary question before this court, nothing farther in the shape of a statement would be needed at the hands of the defendants in error.

But the plaintiff in error has seen fit to include in his statement certain assertions which the defendants in error deem it their privilege and duty to expose and correct.

It is asserted that "the judge of the court before whom the cause was tried was a member of the plaintiff corpora-

tion prosecuting the cause, and liable for costs and damages if unsuccessful therein." The judge was merely an honorary member of the Bar Association, and was not liable at all for dues or assessments. As this fact was judicially determined by the Supreme Court of Missouri against the plaintiff in error, the defendants in error now include in their statement the brief, but pointed opinion of that court on that subject: —

"Waiving all questions in relation to the postponement of this challenge until the close of a protracted trial, and an application to this court after the petitioner's consent to an entry of the judgment *nunc pro tunc*, at a term succeeding the trial term, we are of opinion that the position of JudgeBoyle as an honorary member of the Bar Association did not disqualify him from sitting in the case, since he had not a particle of pecuniary interest involved. The writ of prohibition is denied."

Bowman's Case, 67 Mo. 146.

The defendants in error have the same relation to the Bar Association as Judge Boyle, and none other.

It is asserted that the judge before whom the cause was tried, which resulted in the disbarment of the plaintiff in error, illegally struck from the bill of exceptions thirty-two of the most important exceptions taken to the rulings of the judge at the trial.

This is wholly without foundation in fact. The exceptions claimed had never been taken. The plaintiff in error may have supposed that the *failure* to except at the time when the ruling was made indicated clearly to the court dissent from such ruling. But that idea does not seem to have suggested itself to the court. In any event, this assertion of the plaintiff in error is completely refuted by the record (65 *et seq.*), which proves clearly that the plaintiff in error did not save the exceptions, and that he made a desperate effort to correct the blunder by applying to a

Court of Appeals, which could not have afforded him relief without a most unblushing assumption of jurisdiction.

It is asserted that the jury found adversely to the plaintiff in error as to *several of the charges*, but *in his favor as to the most serious*, and that eleven of the twelve jurymen who tried the cause petitioned the court to impose, under the circumstances, no other penalty than a judgment for costs. This statement is as impertinent to the present record as it is untrue in fact.

The Supreme Court of the United States will not stop to inquire into the merits of the controversy which has led to the disbarment of the plaintiff in error. In fact, he has omitted from his so-called record the evidence adduced against him, upon which alone an intelligent opinion could be based concerning the comparative seriousness of the respective charges. If the Supreme Court of the United States will indicate their desire or jurisdiction to hear the merits of the prosecution of the plaintiff in error, a record of absolute verity can be presented, showing an impartial hearing upon eighteen charges, before a special jury of exceptional intelligence, called for by the plaintiff in error himself; a conviction at the hands of that jury under fourteen of the charges; a judgment of entire removal from practice; a mass of testimony developed during thirty days of protracted trial, upon which that jury found that the plaintiff in error was guilty of betraying the interests of his clients in consideration of rewards paid by those opposed to such interests; that in the name of the department of insurance, whose attorney he was, he worked a fraud upon the department and the courts by instituting proceedings against embarrassed insurance companies in the interest of such companies themselves, or of other companies which controlled them, and at the time when he thus undertook to represent that department he was the paid attorney of the very companies made defendants in such proceedings, or of the companies under whose control they were; and that when he was attorney of a solvent company, under em-

ployment at an exorbitant salary, he deliberately embarked in a scheme to wreck that company, in the interests of parties who paid and contracted to pay him an extravagant reward for the accomplishment of their designs. If the Supreme Court of the United States can examine such a record, the defendants in error will cheerfully submit such facts for consideration. But, for the present, they exclude from their statement representations as to the merits of the controversy between the Bar Association of St. Louis and the plaintiff in error, on the assumption that the Federal question supposed to be presented by the record will certainly be found more congenial to him than a presentment of conclusions of fact, the evidence as to which he has carefully provided shall not be found in such record.

BRIEF OF CHESTER H. KRUM.

Following the course determined upon for the argument of questions presented by the record, I shall limit the brief, on my part, to matters affecting the jurisdiction to entertain the writ of error.

I respectfully submit that the Supreme Court of the United States cannot take jurisdiction under the present record.

I.

Other conditions being satisfied, there must have been a *suit* in the Supreme Court of the State of Missouri, to confer jurisdiction under sect. 709 of the Revised Statutes.

The application for an alternative writ of *mandamus* was not a *suit*.

2 Wag. Mo. Stats. 1006, sect. 1: —

"*Suits* may be *instituted* in courts of record, *except when the statute law of this State otherwise provides*, either: first, by *filing* in the office of the clerk of the proper court *a petition*, setting forth the plaintiff's cause or causes of action, and the remedy sought, *and by the voluntary appearance of the adverse party thereto;* or, secondly, by filing such petition in such office, and suing out thereon a writ of summons against the person, or of attachment against the property of the defendant."

In Missouri, the doctrine of *lis pendens* only applies when parties to a suit have been notified of it.

Bailey *v.* McGinniss, 57 Mo. 362;
Metcalf *v.* Larned, 40 Mo. 572.

In ordinary cases, no *suit* until appearance of parties had, or summons issued, or property levied upon under attachment. No *suit pending* until parties defendant notified.

2 Wag. Mo. Stats. ("Mandamus") 924: —

"Sect. 1. Where any writ of *mandamus* shall be issued out of any court in this State, or by any judge thereof in vacation, directed and delivered to any person who, by law, is required to make return of such writ, such person shall make his return to the first writ of *mandamus*."

No provision made concerning application for alternative writ. The Missouri statute is a reënactment of the statute of Anne. The writ itself, when issued, is the first proceeding in the cause. No suit in *mandamus* begun until writ of *mandamus* issued by the court. No rule to show cause necessary; none customary. Usual practice in this country, in obtaining alternative writ, to present to court formal application, variously termed a petition, relation, or complaint, setting forth in detail the grounds upon which the claim for relief is based, and praying aid of *mandamus*.

High on Ex. Rem. 361;
The State ex rel., etc., *v.* Everett, 52 Mo. 89.

Settled rule, under this practice, that affidavits upon which application for *mandamus* is based, should not be entitled, since there is no *cause* yet pending.

Haight *v.* Turner, 2 Johns. 371;
The People *v.* Tioga Common Pleas, 1 Wend. 291.

Same rule applied to application or relation itself. Proceedings purely *ex parte*.

Chance *v.* Temple, 1 Iowa, 179.

Alternative writ compared to declaration in ordinary action at law, — province being to notify opposite party of the cause of action, and of particular relief demanded.

Canal Trustees *v.* The People, 12 Ill. 254.

It stands in the place of a declaration in an ordinary action at law. It is the beginning of the suit.

The People *v.* Hilliard, 29 Ill. 418;
The People *v.* Hatch, 33 Ill. 139;
Silver *v.* The People, 45 Ill. 227;
The People *v.* Mayor, 51 Ill. 28.

2 Wag. Mo. Stats. 924: —

"Sect. 2. When any writ of *mandamus* shall be issued, and return shall be made thereto, the person suing or prosecuting such writ shall plead to or traverse all or any of the material facts contained in such return.

"Sect. 3. The person making such return shall reply, take issue, or demur to the pleading of the party suing or prosecuting such writ."

In Missouri, therefore, application for writ purely *ex parte*. No *suit* begun until alternative writ issued. Application for writ and its refusal not a suit.

No right litigated between parties, so as to make the proceedings a suit.

Weston *v.* Charleston, 2 Pet. 449.

Instances — matters of procedure equally institution of suit, if application for writ of *mandamus* be the beginning of a suit: —

1. Application for leave to sue as poor person, in anticipation of filing petition stating cause of action.

2. Application for appointment of next friend, in anticipation of suit to be begun for infant.

3. Application for order on person or officer to show cause why proceeding should not be instituted against him.

Instances can be multiplied, — all purely *ex parte* matters. No suit begun by such application. No room there for litigated questions. *Suit begun* by issue of summons or order, after *ex parte* hearing upon the application for leave to sue, or for some necessary order upon a person who, by the issue of the summons or order, thereupon becomes a defendant.

II.

There must have been not only a *suit*, but a *final judgment* in such suit, to confer jurisdiction under sect. 709.

1. Memphis *v.* Brown, 4 Otto, 717, and other cases cited by plaintiff in error, all cases in which issue was joined under an alternative writ, and upon such issue peremptory writ ordered.

No dispute but that such an order constitutes final judgment.

2. While writ of *mandamus* not regarded in this country as prerogative writ, yet the courts have discretion to issue or refuse it.

Ex parte Fleming, 4 Hill, 581;
St. Luke Church *v.* Slack, 7 Cush. 226;
The Commonwealth *v.* Dennison, 24 How. 66;
Bath County *v.* Amy, 13 Wall. 244.

3. Rule or order denying application for writ of *mandamus* not a *final judgment*.

Brooks *v.* Hunt, 17 Johns. 484;
Ex parte Skaggs, 19 Mo. 339;
Shrever *v.* Livingston County, 9 Mo. 195;
The People *v.* Brooklyn, 13 Wend. 130;

Dean, etc., *v.* The King, 1 Bro. P. C. (Tow. Ed.) 73; Pendle *v.* Herle, 3 Id. 505.

Rulings of Supreme Court U. S.:—

1. Motion to quash execution, writ of error will not lie from action on.

Boyle *v.* Zacharie, 6 Pet. 648.

2. Award of writ of restitution in ejectment, not final judgment on which error lies.

"It is no more than the action of a court on its own process, which is submitted to its own discretion."

Smith's Lessee *v.* Traube, 9 Pet. 4.

3. Motion to quash attachment not reviewable on writ of error.

Toland *v.* Sprague, 12 Pet. 300.

4. All matters in *controversy* in the suit below must be disposed of.

Holcombe *v.* McKusick, 20 How. 554.

5. Application to inferior court to supply lost record is not subject for writ of error.

Cook *v.* Bromley, 11 Wall. 672.

6. Refusal of court below to reinstate cause dismissed, no ground for writ of error.

Welch *v.* Mandeville, 7 Cranch, 152.

7. Order granting executory process to enforce mort-

gage is only a judgment *nisi*, and not final. Writ of error does not lie.

Levy *v.* Fitzpatricke, 15 Pet. 167;
Ex parte Cutting, 94 U. S. 14.

In general, all matters which lie within the discretionary powers of the court below not reviewable on writ of error.

Evans *v.* Gee, 14 Pet. 1;
Ames *v.* Smith, 16 Pet. 303;
Brocket *v.* Brocket, 2 How. 238;
Lytie *v.* Cox, 14 How. 1;
Connor *v.* Pugh, 18 How. 394;
Doswell *v.* DeLauga, 20 How. 29;
Callan *v.* May, 2 Black, 543;
Gregg *v.* Forsyth, 2 Wall. 56;
Baxter *v.* Forsyth, 5 Wall. 190;
Wills *v.* McGregor, 13 Wall. 188.

Record, page 7, shows that no judgment was entered. An entry of a refusal of the writ was made, and nothing more. Court merely declined to order an alternative writ.

Ex parte Skaggs, 19 Mo. 339;
Lisle *v.* Rhea, 9 Mo. 172.

"Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order, and an application for an order is a motion."

2 Wag. Mo. Stats. 1052, sect. 3.

"The general practice, on denying motion of this kind, has been not to give costs, especially where the motion is merely *ex parte*."

Ex parte Root, 4 Cow. 548.

Where the relator fails to make out a case entitling him to a peremptory writ, it is the proper practice to enter the judgment that the respondent go without day, and that he recover of the relator his costs.

Tucker *v.* Justices, 1 Jones, 451.

Every settled rule of procedure violated, if refusal to grant alternative writ of *mandamus* held to be final judgment.

Proceeding *ex parte*. No defendants. No determination of controverted question. No issue. No estoppel against relator, under doctrine of *res adjudicata*. No award of costs in favor of defendants, as successful litigants in a suit finally determined by judgment in their behalf.

III.

The record does not show with sufficient certainty in what respect sect. 12 of Art. VI. of the Constitution of Missouri is repugnant to the Constitution of the United States.

1. Claim of repugnancy first made on *motion for rehearing* of application for *mandamus*, —

Limitation of sect. 12, Art. VI., Constitution of Missouri, "*is in violation of the Fourteenth Amendment of the Constitution of the United States, and other provisions of the Constitution of the United States guaranteeing equality to all citizens in their rights, privileges, and obligations.*" (Record, p. 7.)

Response of Supreme Court of Missouri: —

"We are of the opinion that *no provision of our State Constitution with respect to appeals and writs of error from the St. Louis Court of Appeals to this court* conflicts with the *Fourteenth Amendment to the Constitution of the United*

States, or any other provision of that instrument." (Record, p. 8.)

2. Provisions of sect. 12, Art. VI., Constitution of Missouri, with reference to appeals and writs of error from St. Louis Court of Appeals: —

"Appeals shall lie from the decisions of the St. Louis Court of Appeals to the Supreme Court, and writs of error may issue from the Supreme Court to said court in the following cases only: In all cases where the amount in dispute, exclusive of costs, exceeds the sum of $2,500; in cases involving the construction of the Constitution of the United States, or of this State; in cases where the validity of a treaty, or statute of, or authority exercised under the United States, is drawn in question; in cases involving the construction of the revenue laws of this State, or the title to any office under this State; in cases involving title to real estate; in cases where a county or any State officer is a party, and in all cases of felony."

1 Rev. Stats. Mo. 1879, p. 71.

3. Provisions of Fourteenth Amendment, sect. 1: —

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Other sections relate to apportionment of representatives, disabilities preventing choice of senators, and provisions in regard to public debt.

4. Provisions of Art. IV., Constitution of the United States: —

Sect. 2. "The citizens of each State shall be entitled to

all privileges and immunities of citizens of the several States."

Sect. 4. "The United States shall guarantee to every State in this Union a republican form of government," etc.

Foregoing provisions may all be assumed to guarantee "*equality to all citizens in their rights, privileges, and obligations.*"

Which does the record show that the plaintiff in error claimed to have been violated? As against which of these provisions has the Supreme Court of Missouri decided that the limitations of sect. 12, art. VI., of the Constitution of Missouri is a valid law?

Impossible to determine.

5. Settled rule of Supreme Court that the whole record must show that a *certain* provision of the Constitution was relied on by the party who brings the writ of error, and that the right *thus claimed* by him was denied.

Bridge Proprietors *v.* Hoboken, 1 Wall. 116;
Edwards *v.* Elliott, 21 Wall. 532;
Murdock *v.* Memphis, 20 Wall. 290;
Murray *v.* Charleston, 96 U. S. 432.

6. Allegation in record that Constitution of Missouri is in violation of Fourteenth Amendment, and other provisions of the Constitution of the United States, is no more definite than to say it is in "conflict with the Constitution of the United States." This latter generalization uniformly held to be insufficient.

Lawler *v.* Walker, 14 How. 149;
Maxwell *v.* Newbold, 18 How. 511;
Messenger *v.* Mason, 10 Wall. 507;
Armstrong *v.* Treasurer, 16 Pet. 281.

7. This is one of the cases intended to be guarded

against in the reservation in Murdock *v.* Memphis, 20 Wall. 633: "After all, the record of the case — its pleadings, bills of exceptions, judgments, evidence, in short, *its record*, whether it be a case in law or equity, must be the chief foundation of inquiry."

Here a *general claim* is made in a mere *motion*. The court to whom the motion is addressed decides, generally, that no provision of the Constitution has been violated. Neither motion nor opinion is properly part of the record. Both are, in any event, too general for this court to say what was specifically claimed and what was decided.

Moore *v.* Mississippi, 21 Wall. 636.

For the foregoing reasons, I submit that there is no jurisdiction in the Supreme Court of the United States to entertain the writ of error.

CHESTER H. KRUM,
Of Counsel for Defendants in Error.

BRIEF OF MR. HITCHCOCK.

Conceding, for the purpose of argument only, that this court has jurisdiction of this cause, I submit the following considerations upon the constitutional question sought to be raised by plaintiff in error : —

I.

The only question before this court, jurisdiction assumed, is —

Whether those provisions of the Missouri Constitution, which restrict the control of the Supreme Court of Missouri over the decisions of the St. Louis Court of Appeals, on appeal or by writ of error, to those classes of cases only which are specified in section 12, Article VI. thereof, are repugnant to any provision of the Constitution of the United States here said to have been relied on in the Supreme Court of Missouri?

The sections of the Missouri Constitution herein proper to be referred to are in the words following : —

ARTICLE VI. — JUDICIAL DEPARTMENT.

" § 1. *The judicial power of the State*, as to matters of " law and equity, except as in this Constitution otherwise " provided, shall be vested in a Supreme Court, the St. " Louis Court of Appeals, circuit courts, criminal courts, " probate courts, county courts, and municipal corporation " courts.

" § 2. *Jurisdiction of Supreme Court.* — The Supreme " Court, except in cases otherwise directed by this Consti- " tution, shall have appellate jurisdiction only, which shall

"be coextensive with the State, under the restrictions and "limitations in this Constitution provided."

"§ 12. *St. Louis Court of Appeals, jurisdiction of: ap-"peals to Supreme Court:*] There is hereby established "in the City of St. Louis, an Appellate Court, to be known "as the 'St. Louis Court of Appeals,' the jurisdiction of "which shall be coextensive with the city of St. Louis "and the Counties of St. Louis, St. Charles, Lincoln, and "Warren. Said court shall have power to issue writs of "*habeas corpus, quo warranto, mandamus, certiorari,* and "other original remedial writs, and to hear and determine "the same; and shall have a superintending control over all "inferior courts of record in said counties. Appeals shall lie "from the decisions of the St. Louis Court of Appeals to "the Supreme Court, and writs of error may issue from the "Supreme Court to said court in *the following cases only*: "In all cases where the amount in dispute, exclusive of "costs, exceeds the sum of two thousand five hundred dol-"lars; in cases involving the construction of the Constitu-"tion of the United States or of this State; in cases where "the validity of a treaty or statute of, or authority exer-"cised under the United States is drawn in question; in "cases involving the construction of the revenue laws of "this State, or the title to any office under this State; in "cases involving title to real estate; in cases where a county "or other political subdivision of the State, or any State "officer is a party, and in all cases of felony."

"§ 19. *All cases which may be pending in the Supreme "Court at St. Louis* at the time of the adoption of this "Constitution, which by its terms would come within the "final appellate jurisdiction of the St. Louis Court of Ap-"peals, shall be certified and transferred to the St. Louis "Court of Appeals, to be heard and determined by said "court."

The only provision of the Constitution of the United States in any manner alluded to in this record is the XIVth Amendment; though, in plaintiff's brief here filed, reference is also made (p. 14) to that clause of section 4, Article IV., of the Constitution, which provides that "*the "United States shall guarantee to every State in this Union "a republican form of government.*"

It now also appears (pl'ff's br. p. 12) that the clause of the XIVth Amendment which plaintiff in error supposes to have been violated is —

"*Nor shall any State deprive any person of life, liberty, "or property without due process of law; nor deny to any "person within its jurisdiction the equal protection of the "laws.*"

The record shows: —

1. That the only alleged right denied to plaintiff in error by the Supreme Court of Missouri was the right of appeal to that court from a final judgment of the St. Louis Court of Appeals, rendered on appeal from the St. Louis Circuit Court, in a proceeding begun in said Circuit Court against him, under a general statute of Missouri. (Rec., p. 7.)

2. That said proceeding was against plaintiff in error as an attorney of said Circuit Court, for his removal from practice in the courts of Missouri; that he was therein adjudged by the Circuit Court, after a trial by jury, to be so removed, which judgment the St. Louis Court of Appeals affirmed. (Rec., p. 3.)

3. That the validity of no statute or authority exercised under the State of Missouri was drawn in question in the Supreme Court of Missouri, on the ground that the same was repugnant to the Constitution of the United States, unless it was those provisions of the Constitution of Missouri, to wit, section 12 of Article VI. thereof, which grant a right of appeal from the St. Louis Court of Appeals to the Supreme Court of Missouri *in those cases only* which are therein specified. (Rec., p. 7.)

4. That the only decision made in that behalf by the Supreme Court of Missouri on any such question was that said provisions of the Constitution of Missouri do not "con- "flict with the XIVth Amendment to the Constitution of "the United States, or any other provision of that instru- "ment." (Rec., p. 8.)

II.

The clause in section 4 of Article IV. of the Constitution which guarantees to every State a republican form of government can have no application to this case. What government is the established one in a State, as well as its republican character, is a question for the decision of Congress, and not of the courts.

Luther *v.* Borden, 7 How. 42;
Texas *v.* White, 7 Wall. 730.

Congress has thus far been content to recognize the existing State government of Missouri as sufficiently republican in form.

III.

The alleged right of appeal — namely, to the Supreme Court of Missouri, *from a judgment of the St. Louis Court of Appeals, affirming a judgment of the Circuit Court, in a statutory proceeding, removing an attorney from practice in the courts of that State* — is not among the rights secured by the cited clause of the XIVth Amendment.

Neither the right to *due process of law*, nor the right to *the equal protection of the laws* of any State, includes a right of appeal by a disbarred attorney to the highest appellate court in a State whose Constitution expressly withholds jurisdiction thereof from such court, in a statutory proceeding resulting in his disbarment, by a court having jurisdiction, wherein he has had full notice and opportunity for defence.

1. The right to practise law in the courts of any State is not a personal or absolute right; nor does it depend on citizenship, either of the State or of the United States. The right to control and regulate the granting of a license therefor is one of those powers which is not transferred, for its

protection, to the Federal government; and it is clearly within the prerogative of the State Legislature, and under the police power of the State, to prescribe the conditions upon which any person within the State shall be admitted to, or retain, the privilege of practising the profession of law. A State may prescribe police regulations and restrictions touching a particular class, occupation, or locality, in the discretion of its legislature, provided they be general in their application to such class, occupation, or locality, and violate no constitutional prohibition.

Bradwell *v.* The State, 16 Wall. 139, 142;
Simmons *v.* The State, 12 Mo. 271
(Affirmed, City, etc., *v.* Laughlin, 49 Mo. 562);
Ex parte Garland, 4 Wall. 379;
Ib. (*per* Miller, J., dissenting) 384;
Re Charles Taylor, 48 Md. —, 18 Am. L. Reg. (N. S.) 388;
Cooley's Const. Lim. * 390;
The State *v.* Co. Com'rs Baltimore, 29 Md. 516;
The State *v.* Ebert, 40 Mo. 191.

2. The citizen has no vested right in statutory privileges or exemptions. The State may at any time take away such privilege, or annex other conditions to its enjoyment. It may recall a statutory license, or even resume a franchise not granted by way of valid and irrepealable contract. A statutory right to have cases reviewed on appeal may be taken away by the repeal of the statute, even as to causes previously appealed, and directly involving the liberty of the appellant. A State may tax the profession of an attorney, and punish criminally a lawyer previously licensed who thereafter practises without paying such tax; the grant of such license not being a contract.

By accepting a license, the attorney accepts all the conditions annexed thereto, including the right of the State to change them in the public interest; *à fortiori* he accepts

and is bound by the mode prescribed by general law for ascertaining the forfeiture of his privilege.

Cooley's Const. Lim. 383, 384;
The People *v.* Roper, 35 N. Y. 629;
The State *v.* Freleigh, 8 Mo. 606, 614;
The State *v.* Hawthorne, 9 Mo. 390, 393;
Salt Co. *v.* East Saginaw, 13 Wall. 377;
Ex parte McArdle, 7 Wall. 506;
Beer Co. *v.* Massachusetts, 97 U. S. 33;
Simmons *v.* The State, 12 Mo. 268 (affirmed, 49 Mo. 562);
Bank of Columbia *v.* Okely, 4 Wheat. 243;
Munn *v.* Illinois, 94 U. S. 133;
Ib. (*per* Field, J.) 149.

Ex parte Garland expressly recognizes the exclusive jurisdiction of the legislature, Federal or State, to prescribe qualifications to which attorneys must conform. The act of Congress there complained of was declared void solely because it was held, under color of prescribing such qualifications, to *inflict punishment for past conduct* within the express prohibition of the Federal Constitution against bills of attainder and *ex post facto* laws.

Ex parte Garland, 4 Wall. 379.

3. Aside from statute regulations, the power to disbar attorneys for cause, in the exercise of a summary jurisdiction, is inherent in every court of record, and indispensable for the protection of the public, the courts, and the profession itself. It may be exercised without formal allegation, on the affidavit of third parties, or on the court's own motion; and it is the duty of the court to exercise that power whenever it appears requisite for the public good. The sole condition of its valid exercise is that the offending party shall have reasonable notice of the charges, and opportunity to be heard. When so exercised by a court having juris-

diction, it is final, unless there be provision by statute for review on error or appeal.

Cooley's Const. Lim. *337;
Re Peterson, 3 Paige, 513;
Re Austin, 5 Rawle, 203;
Re Percy, 36 N. Y. 653, 654;
Case of Randall, Petitioner, 11 Allen, 479, 480;
Randall *v.* Brigham, 7 Wall. 540;
Ex parte Bradley, 7 Wall. 376;
Bradley *v.* Fisher, 13 Wall. 354;
Ex parte Robinson, 19 Wall. 512.

4. This court holds that an order disbarring an attorney is not reviewable by writ of error, not being a judgment, in the sense of the law, for which this writ will lie; and *for that reason* will grant relief by *mandamus* when such an order is made without jurisdiction, or was arbitrary, irregular, or flagrantly improper. But where the act complained of rested in the exercise of the judicial discretion of the court, even this remedy fails.

Ex parte Bradley, 7 Wall. 376.
Ex parte Robinson, 19 Wall. 513.

In the cases wherein such an order has been reviewed on error or appeal in any State, it will be found that the appellate jurisdiction was conferred by statute or constitution upon the appellate court.

Strother *v.* The State, 1 Mo. 605;
Cf. English *v.* Mullanphy, 1 Mo. 781;
Re Cooper, 22 N. Y. 86.

The foregoing propositions alone dispose of this case on the merits. If the right of an attorney to practise in the courts of a State rests solely on a license granted to him upon conditions prescribed and revocable by the State, the revocation of such license by a State court having jurisdiction of the cause and the parties, as the result of a

judicial proceeding held pursuant to statutory and constitutional enactments forming part of those conditions, is conclusive on him; and is not subject to control by the Federal power.

IV.

The only right here said to have been denied to plaintiff in error is, the alleged right of appeal to a particular court. But "due process of law" does not in any case include a right of appeal as such, but only due notice and opportunity to be heard according to the settled course of judicial proceedings in such cases.

1. The right of appeal in any case, from or to any court, depends exclusively on the jurisdiction of such court, conferred by constitution or statute. Subject to constitutional provisions, the nature and extent of such jurisdiction in State courts rest exclusively in the discretion of the legislature, and may be conferred or withdrawn at its pleasure, so that vested rights be not thereby impaired. It is matter of remedy, not of right, and is within the exclusive province of State legislation.

Ex parte McArdle, 7 Wall. 514;
Sharpe *v.* Robertson, 5 Gratt. 604–606;
Cooley's Const. Lim. *361, and cases cited.

2. "Due process of law" never was held anywhere to include a right of appeal, in any proceeding, from any court, where due notice and opportunity was given for "hearing "before condemnation, and judgment before seizure." This court has lately declared that it is not denied in any case where a party deprived of his property has had, "by "the laws of the State, *a fair trial in a court of justice*, "according to the modes of proceeding applicable to such "a case." It does not even include the right of trial by

jury in the State courts, and in those courts is regulated by the law of the State, as there expounded.

Davidson *v.* New Orleans, 96 U. S. 105;
McMillen *v.* Anderson, 95 U. S. 41;
Kennard *v.* Morgan, 92 U. S. 480;
Murray's Lessee *v.* Hoboken, 18 How. 280;
Walker *v.* Sauvinet, 92 U. S. 93.

It is absurd to contend that "due process of law" includes the right of appeal, seeing that although the Vth Amendment, requiring "due process of law" in the Federal courts, has been in force since the foundation of the government, yet from the beginning till now the right of appeal from the Circuit Courts has been denied, without question, not only in civil cases involving less than $2,000, now increased to $5,000, but to every person convicted of and executed for a capital crime. The same words now applied to the States by the XIVth Amendment have the same meaning.

Davidson *v.* New Orleans, 96 U. S. 103, 104;
United States *v.* Cruikshank, 92 U. S. 554;
Slaughter-House Cases, 16 Wall. 80;
Bank of Columbia *v.* Okely, 4 Wheat. 244.

3. The provisions of the Missouri act concerning attorneys, under which plaintiff in error was disbarred, include every single element recognized by this court in Kennard *v.* Morgan, as together satisfying the constitutional requirement of "due process of law," including a hearing on appeal, — though the Missouri Constitution provides a *different appellate court for certain different classes of cases.* And the decisions of the St. Louis Court of Appeals and the Missouri Supreme Court, appearing in the record, are of themselves conclusive in this court, unless shown to

be contrary to the cited provisions of the United States Constitution.

Kennard *v.* Morgan, 92 U. S. 483;
Walker *v.* Sauvenet, 92 U. S. 93;
McMillen *v.* Anderson, 95 U. S. 41.

V.

The provisions of section 12, Article VI., of the Missouri Constitution do not deny to any person affected thereby "the equal protection of the laws" of Missouri, in any case within those provisions.

1. This provision of the XIVth Amendment is held by this court to be so clearly intended for the protection of the African race that a strong case of *State oppression, by denial of equal justice in its courts*, would be necessary for its application to any other.

Slaughter-House Cases, 16 Wall. 81.

2. The question before this court is not whether, by the judgment of the Circuit Court disbarring plaintiff in error, or by that of the Court of Appeals affirming that judgment, a wrong was done to him by reason of any error, irregularity, or false judgment in that proceeding: but solely whether the law of Missouri touching the disbarment of attorneys, "if followed, would have furnished [plaintiff "in error] the protection guaranteed by the Constitu- "tion," — namely, *a protection in respect of his privilege to practise as an attorney in the courts of Missouri equal to that afforded by the general laws of that State to any other person having the like privilege, under like circumstances.*

Kennard *v.* Morgan, 92 U. S. 481.

3. The cases from Tennessee cited in plaintiff's brief

furnish precisely the test above suggested for equal, as compared with unequal, partial, or oppressive laws.

In Van Zandt *v.* Waddell, 2 Yerg. 270, the Act complained of was a special Act, which afforded a summary process by warrant and judgment thereon against two specified banks, on their failure to pay their notes on demand; also authorizing the contemporaneous garnishment of supposed debtors of the bank, and summary judgment against them as garnishees. It was denounced as partial, unequal, and oppressive, and also as depriving the defendant (garnishee) of his property otherwise than "by the law of the land," or due process of law. But the court overruled all these objections and upheld the Act. CATRON, C. J., said: —

"The right to life, liberty, and property of every individual "must stand or fall by the same rule or law that governs every "other member of the body-politic, or 'land,' *under similar cir-* "*cumstances;* and every partial or private law, which directly "proposes to destroy or affect individual rights, or does the same "thing by affording remedies leading to similar consequences, is "unconstitutional and void. * * * A general and public law, "prescribing remedies and modes of redress to enforce existing "liabilities, can certainly be constitutionally passed. 4 Munf. "107; 4 Wheat. 200, 207. Can the same be done by partial or pri- "vate law? This can as certainly not be done *if the measure of* "*justice to be administered is not according to the public laws of the* "*land.* Yet nothing can be seen in the present record," etc., etc.

PECK, J., in the same case said: —

"The counsel who argued so strenuously that the provisions "contained in the charter of the bank are encroached upon by the "act of 1821, and that the act in question *is an edict upon certain* "*individuals*, seem to forget that the bank, and all called upon to "answer under said act, *have their day in court allowed them,* "*that they have the right to be heard in defence, and that no one* "*shall be held liable for the debt demanded until a jury has passed* "*upon it.*"

In Walley's Heirs *v.* Kennedy, 2 Yerg. 554, the act complained of as a partial and unequal law provided, in effect, that a particular and novel defence should be available in actions of ejectment relating to a particular class of titles to land in a particular district in Tennessee, which was not made available in actions of ejectment anywhere else in the

State. The court held the act void, for the following reasons:

"The act of 1827 is peculiarly partial. It is limited in its opera-
"tion to a comparatively small section of the State, and *to a very few*
"*individuals, claiming a very small portion of the section of country*
"*referred to. The act was intended to drive from the courts of jus-*
"*tice a few odious individuals*, who, it was supposed, had specu-
"lated, etc. * * * If the supposed facts did exist, there was
"good cause for public indignation, but none for a violation of
"the Constitution by the passage of a law affecting the rights of
"a few individuals, but by which the great body of the people or
"the Legislature themselves were unwilling to be bound."

In State Bank *v.* Cooper, 2 Yerg. 600, 621, the law complained of was one which established a special court, with exclusive and final jurisdiction, to hear and determine all cases *against officers of the Bank of the State of Tennessee and their sureties, and against defaulters to said bank;* such cases to be tried according to the principles of a court of equity, and final judgment given thereon without appeal. The court held such an act void, as being partial and unequal, and said (2 Yerg. 607):—

"This law only acts upon individual cases, and is the same in
"principle as if a law had been passed in favor of some one mer-
"chant, enabling him, by the method therein prescribed, to take
"judgment against his debtor without the right of appeal. * * *
"Two important privileges — the trial by jury and the right of
"appeal — are by this act taken away in these special cases, while
"every other member of the community *having incurred similar*
"*liabilities*, enjoys them. * * * Other banks, and many mer-
"chants and many other members of the community, have con-
"tracts similar to the one set out in this bill. In order to have
"avoided the force of the objection to this act, it should have
"operated equally on all these; and because it has not done so,
"it is not the law of the land."

In the same case, Kennedy J., said (2 Yerg. 621):—

"Does this statute apply to all the citizens of the State? Does
"it apply to all the debtor class of society? Or to all those who
"are indebted to the bank? It does not. It is intended to affect
"only a few of those who are indebted to that institution. It can-
"not, therefore, with propriety, be called *legem terræ*, — the law of
"the land."

In this case, the court cited approvingly the opinion of

Judge Catron in Van Zandt *v.* Waddell, 2 Yerg. 270, above referred to.

In Jones *v.* Perry, 10 Yerg. 59, a law was declared void which specially authorized the guardian of certain named minors to sell certain lands inherited by them, and apply the proceeds to the payment of certain supposed debts of their deceased ancestor. Said the court: —

> "In this case the parties whose land was sold were not indebted. "It is not certain that the debts due from their ancestor would "ever become a charge on their lands. By this sale, then, "their real estate is taken away and applied to the payment of "debts they did not owe; not by the judgment of their peers, "not by the law of the land, but by a special, partial act of the "Legislature, *applicable to their case alone.*"

In Reynolds *v.* Baker, 6 Coldw. 221, the question was concerning an Act of May 30, 1865, which suspended all statutes of limitation between May 6, 1861, and January 1, 1867, further providing that the time between those dates should not be computed in cases where real estate sold under execution was subject to redemption. Certain land having been sold under execution in 1860, when the existing law allowed two years to the execution debtor for redemption, he offered to redeem after the two years had expired; which being refused, he brought a bill for redemption, under the act referred to, in 1865. The court held that the right of the purchaser under execution was complete and vested at the expiration of the two years, and that it was not in the power of the General Assembly to divest that right by statute, against the will of the owner, except by the "law of the land," which was held to mean "due process of law:" citing Cooley's Const. Lim. 352, 357, 365; also Van Zandt *v.* Waddell, and the other cases above referred to.

In Budd *v.* The State, 3 Humph. 483, 490, the provision of law drawn in question was found in section 22 of the Act of 1832 chartering the Union Bank of Tennessee. This provided that "*if the cashier, or any other of the officers, "servants, and agents of said corporation*, shall embezzle, "etc., or shall make false entries with intent to defraud "said bank," etc, he should be guilty of felony. The defendant, convicted thereunder, appealed to the Supreme Court, which declared the law void, on the following grounds: —

"It is an act, then, creating a new felony in relation to the "officers, servants, and agents of the corporation bank, and *to* "*them only*. Is this a law of the land, in the sense of our Bill of "Rights? * * * If the felony affected only all the clerks and "all the merchants of Nashville, or of Davidson County, or of "Middle Tennessee, would that, in either case, be 'the law of the "land'? It is believed none would so contend; and why not? "Simply because a law of the land is a rule alike embracing and "equally affecting all persons in general, *or all persons who exist*, "*or may come into the like state and circumstances*. * * * We "do not think the law in question partial because merchants' "clerks, or the public officers called clerks, were not embraced, "but because the officers, agents, and servants of banks in gen- "eral, *persons in like situations and circumstances, were not em-* "*braced. It matters not how few the persons are, if all who are* "*or may come into the like circumstances and situations are em-* "*braced, the law is general, and not a partial law.* The principles "here set forth are not new in this State. They are little more "than the reannouncement of what is said in 2 Yerg. 260, 554, "etc."

4. The reiterated assertion which constitutes the plaintiff's brief, to the effect that the cited provisions of the Missouri Constitution deny to persons residing in certain portions of the State "remedial rights and privileges" granted to residents of all other portions, is a completely erroneous representation of those provisions.

No person within the jurisdiction of the State of Missouri is thereby, in any case whatever, denied a writ of error from or an appeal to the Supreme Court of Missouri on the ground of his residence, nor on any other ground personal to himself, nor on any other ground which is or may not be applicable to any other person in the State of Missouri *in like circumstances and situation*.

The actual provision is: —

"Appeals shall lie from the decisions of the St. Louis "Court of Appeals to the Supreme Court, and writs of "error may issue from the Supreme Court to said court, "*in the following cases only:* In all cases where the "amount in dispute," etc., etc.

Five classes of cases are then mentioned, each designated *by its subject-matter*, and without any reference whatever to the persons litigant therein.

It is obvious that either party to any case falling within these classes may be or may not be a resident of the designated territory: and that either party to any case pending in the St. Louis Court of Appeals which does not fall within the said five classes, in like manner may be or may not be a resident thereof.

In either case, the right of appeal to the Supreme Court depends exclusively upon the matter in controversy in the particular suit; and in no case is the existence or non-existence of the right of appeal made to depend upon *the residence of either party to the suit.*

In other words, every person who is a party to any suit pending in the St. Louis Court of Appeals, which falls within the appellate jurisdiction of the Supreme Court, has a right of appeal to that court, no matter where he resides; and every person, party to a suit pending in said Court of Appeals, which, because of its subject-matter, is not appealable to the Supreme Court, is denied an appeal thereto, no matter where he resides.

For example, A., residing in St. Louis, has a note for $2,000, made by B., residing in Buchanan County. If he sues B. in the Buchanan Circuit Court, either party may appeal the case to the Supreme Court, and neither can appeal it to the St. Louis Court of Appeals. But if A. bring suit on that same note in the St. Louis Circuit Court, as he may if he finds B. within the jurisdiction thereof, then either party can appeal the cause to the St. Louis Court of Appeals, and neither party can appeal it to the Supreme Court. So, *vice versa*, if the note sued on were held by B., and A. were the maker thereof and defendant in the suit. It is a question exclusively of the forum and the jurisdiction.

So, if the plaintiff in error had been guilty of malpractice, deceit, and professional misconduct in Howard County, he could have been proceeded against under the statute concerning attorneys, either in the St. Louis Circuit Court, because of his residence in the city of St. Louis, or in the Howard Circuit Court, because that was the place where the

offence was committed. From the judgment of the Howard Circuit Court he would have had an appeal direct to the Supreme Court. From the judgment of the St. Louis Circuit Court he would have an appeal only to the St. Louis Court of Appeals, the judgment whereof would in the case supposed be final. His residence would have nothing to do with his right of appeal, except so far as it affected or was the foundation of the jurisdiction of the cause itself, in the court of first instance.

So, also, if an attorney residing in Howard, or Jackson, or Pike, or Greene, or any other of the 109 favored counties of Missouri, were to commit *in the city of St. Louis* any professional misdemeanor of like character, he might be proceeded against, under the act referred to, either in the St. Louis Circuit Court or in the Circuit Court of the county where he resided, and the statements just made would equally apply to him.

But, whether in the Howard Circuit Court or the St. Louis Circuit Court, neither defendant in the cases supposed could be charged with any offence not prohibited in a general law of the State, equally applicable to every attorney therein. He must in either court be proceeded against in the same manner, would be entitled to make the like defence, would equally have his day in court, would equally be tried according to the "settled course of judicial proceedings" (92 U. S. 93) in such cases throughout the State, would have the benefit of a jury-trial, and of every exception to supposed erroneous rulings of the trial court which he chose to make; and finally, if found guilty of professional misconduct by either court, would be subject to no other or different punishment in the one jurisdiction than in the other. In either case he would have a right of appeal, according to the "settled course of proceedings" under Missouri laws, for invoking the appellate jurisdiction of a superior court; in either case, if an appeal were wrongfully denied him, he would have his remedy by *mandamus*. At this point, and not before, comes in the alleged "ine-

quality." From one Circuit Court an appeal by either defendant in the case supposed would lie only to the Supreme Court, from the other only to the St. Louis Court of Appeals; and the judgment of such appellate court would in the cases supposed, respectively, be final.

This is not *unequal protection*. It is simply a difference in the jurisdiction of different courts, each of which is bound by and created to administer the same general and equal laws.

The alleged denial of equal rights, and of the "equal protection of the law," to persons residing in a specified portion of the State, is therefore a fiction. The provisions complained of make no distinction whatever *between persons*. In every case, the rules affecting the rights and liabilities of all *persons in like situation* are identical. The methods of procedure are the same, in substance and effect; no person or class of persons, as such, is endowed with any other or greater right, or remedy, or protection, *under given circumstances*, than that which is afforded to every other person within the jurisdiction of the State *under like circumstances*.

If it be said that a case might arise wherein both plaintiff and defendant were residents of St. Louis, and that in such case, under Article III., section 1, of the Practice Act (cited *supra*, p. 5), the suit must be brought in the St. Louis Circuit Court, and unless within the five specified classes appealable to the Supreme Court, an appeal therein must stop at the Court of Appeals, and that in such case there is "a denial of equal remedial rights," — I answer that, conceding the premises, the conclusion is absurd.

A like complaint might be made in respect of the original jurisdiction of every Circuit Court in the State, under the same section of the Practice Act. The so-called "inequality" exists in respect not only of the right of appeal in certain cases, but equally in respect of the original institution of any suit. How grievous it is, a simple illustration will show.

The Missouri Practice Act denies to Smith, who resides in St. Louis, the right to sue Brown, residing in the same city, in any but the St. Louis Circuit Court; although it permits Jones, who lives in Howard County, to sue both Smith and Brown, either in the St. Louis Circuit Court, or, if he can catch them in Howard County, then in the Howard Circuit Court also. The more closely we look into this iniquitous system, the more shocking it appears. Smith may be convinced that the Howard circuit judge is a far better lawyer than the five judges of the St. Louis Circuit Court, taken together. He may languish for the opportunity of submitting his cause to that learned and impartial man, who is *pas même Academicien*, — not even an honorary member of the Bar Association. He may have beaten Jones in that very court. And yet, while Jones (as against Smith) has the choice of the two courts, Smith (as against Brown) can resort, under this partial, unequal, and oppressive law, to but one of them; and if it does not occur to him *until after the trial* that the St. Louis judges are interested, prejudiced, and corrupt, he has not even a remedy by change of venue!

This shameful state of things, be it remembered, results directly from the limits to the jurisdiction of Circuit Courts, unblushingly based on residence alone.

I admit that under such circumstances it might seem to Smith, writhing under such oppression, a mere mockery to tell him that he was confounding the jurisdiction of the court, and the right and power of the State to assign that jurisdiction, with that "equal protection of the laws" which its statutes require each one of those courts alike impartially to administer.

VI.

The power to create and define the jurisdiction of the several courts of justice of any State, and to determine what shall be the procedure therein, is within the exclusive

control of such State. "Due process of law," in any State, is such process as, under the general laws thereof, is provided in the settled course of judicial proceedings. Even in suits at common law, it need not include a trial by jury.

Walker *v.* Sauvinet, 92 U. S. 93.

Likewise is the question of an appeal from or to any court exclusively a question of jurisdiction, to be determined exclusively by the State legislature, pursuant to the State constitution. So long as such jurisdiction, whether original or appellate, is assigned to the several State courts under general laws, of uniform operation in the classes of cases to which they relate, and provided the State assumes to exercise no power prohibited by the Constitution of the United States, it is no concern either of the courts or of the Congress of the United States what provision the State chooses to make in that regard.

These matters fall within the autonomy of the States themselves, with which it would be a grave usurpation for the Federal power to interfere. Such interference is not the purpose, nor within the purview of the XIVth Amendment. If it were, then the conclusion would follow, so earnestly deprecated by this court in the Slaughter-House Cases, that this court should sit, "a perpetual censor upon "all legislation of the States on the civil rights of their own "citizens, with authority to nullify such as it did not approve "as consistent with those rights, as they existed at the "time of the adoption of this amendment." More than this, since the power of Congress to enforce the XIVth Amendment by appropriate legislation draws after it a corresponding trust and obligation, it would be the duty of Congress, under such a decision as is now here sought from this court, to reconstruct, not alone the political organization of States in rebellion, but the interior judicial framework and machinery of any State which did not permit every suitor therein to prescribe and define to his own satisfac-

tion the jurisdiction (why not equally the composition?) of every court established by the State, and by it charged with the impartial administration of its general and equal laws.

Munn *v.* Illinois, 94 U. S. 125, 132–134;
Sharpe *v.* Robertson, 5 Gratt. 604–608;
Slaughter-House Cases, 16 Wall. 77.

VII.

The assertion, in the brief for plaintiff in error (p. 12), that the provisions of the Missouri Constitution here complained of are without precedent, is singularly incorrect, unless so literally meant as to be unworthy of notice. A majority of the constitutional provisions cited in the appendix thereto show the contrary.

Great stress is laid upon those instances where the appellate jurisdiction of the Supreme (or other highest appellate) Court is "coextensive with the limits of the State." This is an interesting but impertinent fact. The appellate jurisdiction of the Supreme Court of Missouri (Art. VI., sect. 2) is made coextensive with the limits of the State, *in all cases to which that jurisdiction extends.* It does not extend to the cases whereof the State Constitution confers final appellate jurisdiction on the St. Louis Court of Appeals. As to all such cases, the latter court is as truly the highest appellate court of the State as the Missouri Supreme Court is in respect to the others. But the real question is whether every litigant in the State has, under the XIVth Amendment, a right *to take his case to the Supreme Court*, no matter what its nature, because the State grants to some litigants the right to take some cases there; and whether, if any litigant is denied that right, he is therefore denied "the equal protection of the laws" which either court is equally bound to enforce?

Conceding that where a State constitution expressly con-

fers upon the highest appellate court thereby established an unrestricted supervisory control over all inferior courts throughout the State, every litigant would by virtue of the jurisdiction so created be entitled to the judgment of that court on error or appeal, — this is nothing to the purpose. If the Constitution confers such jurisdiction, of course it does confer it. Probably such an all-controlling jurisdiction could be exercised without the aid of a statute.

English *v.* Mullanphy, 1 Mo. 781.

But when the State constitution simply establishes a supreme, or highest appellate court, — *à fortiori*, when (as in Massachusetts and New Hampshire) it does not even do that, — and authorizes the creation by the legislature of other courts, even though called inferior, and either expressly or by implication leaves it to the legislature to define the respective jurisdiction of all of them, — then the extent of the jurisdiction, as well of such supreme as of any inferior court, is a matter wholly dependent upon the legislative will.

"It may be made broad or narrow, as the discretion of "the legislature shall dictate. It may be made to embrace "the whole judicial appellate power, or a small portion of "it only. It may be confined to civil controversies, or to "actions at common law, or to suits in equity, or to actions "or suits of a particular description. It may exclude civil "controversies altogether, or be restricted to criminal "causes. It may from time to time be extended, or with-"held, or withdrawn, as to the legislative mind may seem "most expedient."

Sharpe *v.* Robertson, 5 Gratt. 604;
Sheldon *v.* Sill, 8 How. 449.

The case first cited involved the constitutionality of the Virginia Act of March 31, 1848, constituting a Special Court of Appeals, by which was purposely withdrawn from the jurisdiction of the Supreme Court of Appeals then ex-

isting, under the Constitution of 1830, the final determination of all causes which, when such special court should first meet, should have been depending in that court more than two years without being heard. The purpose of this Act was precisely similar to that for which the St. Louis Court of Appeals was established by the Missouri Constitution of 1875, — namely, to relieve the Supreme Court from an accumulation of causes which resulted in a practical denial of justice. The constitutional question was fiercely contested, elaborately considered (the case occupies 135 out of the 706 pages of 5 Grattan), and the Act was held constitutional. The clause of the Virginia Constitution of 1830, therein drawn in question, was as follows (Art. V., sect. 1): —

"Section 1. The judicial power shall be vested in a "Supreme Court of Appeals, in such superior courts as the "Legislature may from time to time ordain and establish, "and the judges thereof, in the County Courts, and in jus- "tices of the peace. The Legislature may also vest such "jurisdiction as shall be deemed necessary in corporation "courts, and in the magistrates who may belong to the "corporate body. The jurisdiction of these tribunals, and "of the judges thereof, shall be regulated by law."

The necessity for relief continuing, and in order to avoid further question, the Virginia Constitution of 1850 (Art. VI., sect. 12) expressly authorized the creation of Special Courts of Appeals, in addition to the Supreme Court of Appeals established by sects. 1, 10, 11; and also took away the appellate jurisdiction of the latter, in civil causes wherein the amount in controversy was below $500, with certain specified exceptions. The Virginia Constitution of 1864 (art. VI., sects. 11, 12) renewed these provisions. The Constitution of 1870 again renewed them, but enlarged the jurisdiction of the Special Courts of Appeals, if established, to include "any case *on the said docket* [of the "Supreme Court of Appeals] which cannot otherwise be "disposed of with convenient dispatch" (Art. VI., sect. 3).

Referring to plaintiff's statement of the constitutional provisions of thirty-six States, but construing them by the obvious principles above stated, we find that in only ten States — Illinois, Delaware, Florida, Georgia, Michigan, Minnesota, New Jersey, North Carolina, Oregon, and Wisconsin — does the constitution confer unlimited appellate jurisdiction upon the highest appellate court.

In twenty-two States — namely, New York, Pennsylvania, Maryland, Ohio, Massachusetts, New Hampshire, Mississippi, Indiana, Kansas, Arkansas, Alabama, Colorado, Connecticut, Kentucky, Iowa, Maine, Nebraska, Rhode Island, South Carolina, Tennessee, Texas, and Vermont — it is in terms, or by necessary implication, left to the legislature to provide and declare the appellate jurisdiction of any of the courts authorized or established by the constitution.

When the plaintiff states (in italics) that the Constitution of Kansas (1859, Art. III., sect. 3) provides "that the jurisdiction of the Supreme Court *shall be coextensive with the State*, and shall possess such appellate jurisdiction as may be prescribed by law," he seems not to understand that under such a provision it is perfectly competent for the Legislature of Kansas to restrict the appellate jurisdiction of the Supreme Court, say in criminal cases, to felonies, and in civil cases to an amount, etc., exceeding, say $500; *provided*, appeals are authorized from every county in the State *in all cases answering such description*.

In fact, between March, 1862, and March, 1867, in the State of Kansas, no appeal lay from any judgment of a Probate Court even to the District Courts, because of the repeal, in 1862, of a former Act allowing such appeals, without new provision therefor. In March, 1867, an Act authorizing such appeals was passed. Cases appealed from Probate Courts between February, 1860, and March, 1867, were dismissed on appeal for want of jurisdiction; cases subsequently appealed were entertained.

Reuter *v.* Bauer, 3 Kan. 505;
Trosper *v.* Horr, 4 Kan. 59;
Barrett *v.* Johnson, 4 Kan. 331.

The Supreme Court of Kansas were probably aware that their appellate jurisdiction was "coextensive with the "State," but they were also under the impression that it was for the Legislature alone to say in what cases any court in Kansas should or should not exercise appellate jurisdiction. In this respect they held views similar to those expressed by this court in *Ex parte* McArdle, 7 Wall. 514.

The Constitutions of Massachusetts (Chap. I., Art. 3) and New Hampshire (Sect. 4) commit to the Legislature, or "General Court," the whole subject of establishing courts of justice and assigning their jurisdiction, not even establishing a supreme or highest appellate court of any kind. The latter (Sects. 74, 76, 80) speaks of "the Superior Court" and "judges of probate," assuming that such will be provided. The former (Chap. III., Art. 5) requires all causes of marriage, divorce, and alimony, and all probate appeals, to be heard and determined by *the governor and council, until the Legislature shall by law make other provision.* The latter (Sect. 76) commits similar questions to "the Superior Court" *until the Legislature shall by law make other provision.*

Can it be said that if and whenever the Legislature of either of these States established a Supreme Court, with appellate jurisdiction, it could not restrict the right of appeal thereto from any inferior court, in any class of cases, at its own discretion?

The Wisconsin Constitution (1848, Art. VII., Sect. 4) expressly authorizes the Legislature, if they should think it expedient and necessary, to provide by law for the organization of "*a separate Supreme Court*, with the jurisdiction "and powers prescribed in this Constitution, to consist," etc. Here is a provision for two coördinate and indepen-

dent Supreme Courts; and since the jurisdiction of the Supreme Court established by the Constitution is not defined, except as being appellate only, it follows that the Legislature of that State can, in its discretion, assign certain classes of causes to one, and certain classes of causes to the other of the two Supreme Courts thus authorized to exist side by side.

There is nothing new in such a state of things. This court does not need to be reminded of the New York Commission of Appeals, established by the amendment of 1869 to the Constitution of 1846, and set in motion by the act of April 14, 1870.

44 N. Y. (5 Hand), p. iii.

Nor of the similar court established in Ohio, for the like purpose of dividing the load of litigation under which the Supreme Court of that State was laboring.

On page 19 (Appendix) of plaintiff's brief it is stated, concerning the Constitutions of California (1849, amended 1862), Nevada (1864), Louisiana (1868), Virginia (1870), and West Virginia (1872), that "each prescribes limits "to the appellate jurisdiction of the Supreme Court, and "such limitations are made to apply equally throughout the "entire State."

In California (Art. VI., sect. 4) the criminal appellate jurisdiction of the Supreme Court is limited to felonies, and therein to questions of law alone; its civil appellate jurisdiction in equity is unlimited, but at law includes no case wherein the demand is less than $300, except those involving titles to real estate, probate appeals, and the legality of any tax, impost, assessment, toll, or municipal fine.

In Nevada (Art. VI., sect. 4) the limitations are the same, with the addition of mining claims.

In Louisiana (Tit. IV., art. 74) the Supreme Court has appellate jurisdiction only, limited in civil cases to contro-

versies exceeding $500, and cases involving the constitutionality or legality of any tax, toll, impost, or municipal fine, forfeiture, or penalty; and in criminal cases to questions of law only, when death, imprisonment at hard labor, or a fine exceeding $300 is actually imposed.

The provisions of the Virginia Constitution of 1870 have already been mentioned, including authority to the Legislature to create special courts of appeals, with final appellate jurisdiction, for the relief of the Supreme Court of Appeals.

In West Virginia (Art. VIII., sect. 3) the appellate jurisdiction of the Supreme Court of Appeals in civil cases is limited to controversies exceeding $100, with the addition of certain specified classes of questions.

Two-thirds of all the States thus directly illustrate the idea that a right of appeal to any given court, in any given case, or class of cases, is within the absolute control of the State. In notable and familiar instances two distinct appellate tribunals have been established or authorized, to one or the other of which any litigant may be sent, or to neither of which he may be permitted to go, as the Legislature shall see fit. Sometimes — *e.g.*, Virginia — the Special Court of Appeals is simply a tender to the regular appellate tribunal, relieving it of surplus work. Again, — *e.g.*, New York, Ohio, Wisconsin, — the Commission of Appeals, or separate Supreme Court, is a coördinate body, dividing appeal cases in such manner as prescribed by the constitution, or as may be prescribed by the Legislature. In each case, under whatever form, with varying limitations and restrictions as to amount, nature of controversy, grade of crime or severity of punishment, the powers, restrictions and limitations in question are treated purely with reference to the public convenience and dispatch of business, and as being absolutely within the discretion of the State and the people thereof, either in convention, or acting by their representatives in the legislature.

No question has been raised, that I can find, touching the

inherent power of a State thus to control, to limit, to deny, the right of appeal from any court to any higher court. In Sharpe *v.* Robertson, 5 Gratt. 518, the question turned not upon the power of the State to do this by constitutional enactment, but whether, under the Constitution of 1830, it was competent for the Legislature, — a much narrower question than the one here sought to be raised.

But if a State can limit the jurisdiction of its highest appellate court, on grounds of public policy, of which the State is the sole judge, to classes of cases selected with reference to the amount involved, or the nature of the controversy, or the severity of the punishment inflicted upon the criminal, why may it not equally limit such appellate jurisdiction, also for reasons of public policy, with respect to the locality of the original jurisdiction in the cause? *A fortiori*, if such be deemed an appropriate means of fulfilling its acknowledged obligation (Const. Mo. 1875, Art. II., Bill of Rights, sect. 10), "that right and justice should "be administered without sale, denial, *or delay?*"

"Laws public in their objects may, unless express con-"stitutional provision forbids, be either general or local in "their application. * * * The authority that legislates "for the State at large must determine whether particular "rules shall extend to the whole State and all its citizens, or, "on the other hand, to a subdivision of the State or a single "class of its citizens only. * * * These discrimina-"tions are made constantly, and the fact that the laws are "of local or special operation only is not supposed to ren-"der them obnoxious in principle. * * * If the laws "be otherwise unobjectionable, all that can be required in "these cases is, that they be general in their application to "the class or locality to which they apply; and they are "then public in character, and of their propriety and policy "the Legislature must judge."

Cooley's Const. Lim. *390;
The State *v.* County Commissioners of Baltimore, 29 Md. 516;
The State *v.* Ebert, 40 Mo. 191.

VIII.

The complaint made by plaintiff in error (brief, pp. 10, 11) is, in substance, that —

"*The door of the Supreme Court of the State is shut* "*and barred against him*, by the provision of the State "Constitution establishing unjust discrimination between "the citizens of different portions of the State."

This is indeed the whole complaint, into which all else resolves itself. Not that he has not had his day in court, his citation, his opportunity to be heard, his trial by jury, his right of exceptions and appeal, his hearing on appeal by a court confessedly competent to review the judgment below; for all these the record shows were granted by equal laws to him, as to "every other member of the body-politic, or 'land,' *under similar circumstances*" (Van Zandt *v.* Waddell, 2 Yerg. 270). Not that the law under which he was found guilty charged him with any offence not chargeable, or denied him any opportunity or ground of defence available, to any other attorney in the State of Missouri, according to the statutes and "the settled course of judicial proceedings" applicable to every such case; nor that the court of first instance, and the appellate court to which he might and did resort, were not both bound by precisely the same general laws which bind the Supreme Court of Missouri, and which this court will conclusively presume from this record that they did obey.

Randall *v.* Brigham, 7 Wall. 540;
Kennard *v.* Morgan, 92 U. S. 483.

Solely that there is a Supreme Court established in the State, whose appellate jurisdiction includes certain other cases, but does not include the class within which falls the case at bar, — this, and this only, is denounced as "a case "of State oppression, by denial of equal justice in its "courts."

IX.

But what would constitute a denial *by the State* of the equal protection of its laws, or equal justice in its courts? Certainly not the refusal by any court, or judge thereof, righteously to execute equal laws enacted by the State. The fault, the injustice, the inequality, must be found in the intended operation of the law itself. Or, as this court has said, —

"The question is not whether the courts below, having "jurisdiction of the case and the parties, have followed the "law, but whether the law, if followed, would have fur- "nished the protection guaranteed by the Constitution."

Kennard *v.* Morgan, 92 U. S. 481.

It is not claimed that the Missouri act concerning attorneys, under which plaintiff in error was disbarred, is other than a general and equal law, nor that its provisions violate any prohibition of the Constitution of the United States; nor that, if proceedings under it could be carried on appeal to the Supreme Court, this court would have any jurisdiction to review the action of that court thereon.

The only complaint is that the State, by refusing to plaintiff in error, and to all suitors in like situation with him, an appeal to the Supreme Court, has denied him a protection equal to that furnished in respect of similar rights to other suitors who are permitted to appeal to the Supreme Court.

But the constitutional provision here complained of, if followed, could only have the following result: —

It would oblige the plaintiff in error, seeking to correct alleged errors in the proceedings of the Circuit Court, to submit those proceedings for review to the St. Louis Court of Appeals, and to accept the decison of that court as final. It would oblige the St. Louis Court of Appeals, in reviewing those proceedings, to decide upon the alleged errors therein according to the general laws of the State applicable

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to every such case; for it is not claimed that any other than a general law was invoked, or has been enacted. And this court must and will presume that this was done.

McMillen *v.* Anderson, 95 U. S. 41.

But it is not claimed that any law of Missouri requires or permits the Supreme Court, in the case of any suitor therein, to apply or enforce, in respect of such rights as plaintiff claims, or in respect of errors such as were alleged by him against the St. Louis Circuit Court, any different rule or law from those which in like cases are binding upon the St. Louis Court of Appeals.

On the contrary, it appears that the law which binds the Supreme Court in every such case is the same, and if followed must lead to the same results, with the law which in every such case is binding on the St. Louis Court of Appeals.

In either court, therefore, the laws under which the plaintiff in error was disbarred for malpractice, deceit, and professional misdemeanor must, if followed, lead to precisely the same result.

The intended operation, therefore, of the Missouri Constitution in this regard, and, as this court is bound to presume, its actual effect, was to provide for suitors in either appellate court not only an equal, but an identical measure of justice and protection in respect to such rights as are involved in proceedings of this nature. But if so, the constitutional provisions in question involve no violation whatever of the XIVth Amendment.

If, then, it shall appear to this court, upon this record, that it has jurisdiction to review the action of the Supreme Court of Missouri in this behalf, the judgment of this court should be in affirmance thereof.

HENRY HITCHCOCK

Of Counsel for Defendants in Error.

5 Grattan - Shanks v Robbins

OFFICE SUPREME COURT U. S.
FILED
MAR 6 1880
D. W. MIDDLETON, Clerk.

IN THE

SUPREME COURT.

OCTOBER TERM, 1879.—CAUSE NO. 904½.

STATE OF MISSOURI *Ex Rel.* FRANK J. BOWMAN

vs.

E. A. LEWIS *et al.*, JUDGES ST. LOUIS COURT OF APPEALS.

ORAL ARGUMENTS

— OF —

JEREMIAH S. BLACK

AND

GEO. F. EDMUNDS

For Plaintiff in Error,

WITH NOTE IN REPLY TO DEFENDANT IN ERROR,

BY

DAVID WAGNER.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1879.—CAUSE NO. 904½.

FRANK J. BOWMAN,
Plaintiff in Error,

vs.

EDWARD A. LEWIS, EL. AL.,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

ARGUMENT OF JUDGE BLACK.

Mr. BLACK said: This case involves a point of constitutional law deeply interesting to the whole community, and especially important to the party before you.

It is very plain, very simple, and not doubtful. We may be wrong. If we are, we are so madly wrong that you will decide it against us without hesitation; and, if we are right there cannot be much said upon the other side; there is no middle ground upon which you can find a halting-place.

It is my duty to define the present position of the case and state the ground upon which we expect that you will give to us the right which we vainly asked for in the State

court of last resort. We insist upon it that what we asked for was a RIGHT. We demanded an appeal from the decision made against us by the local courts. Other people of the State had that right undeniably; therefore we had it, for the State owed us the *equal protection* of the law.

In view of some assertions and insinuations of the other side, it may be necessary and proper for me to say, that the authority of this court is not now invoked by a man of doubtful character, or for a trifling purpose, but that justice may be done to a most meritorious citizen who has been foully wronged. He is a lawyer, and a sentence of expulsion from the bar has been passed against him. Compared to this, an order that he should be taken out and shot would be a visitation of mercy. You will surely admit that, if he is innocent, he ought to be relieved. When I say that he is a gentleman who stands in a position as near the head of the bar in the Western country as any other of his years has ever reached, and that he deserves to stand there by his talents and his integrity, I say what I do know—that is, I know it as well as any fact of that nature can be known upon human evidence: for it is perfectly impossible that the men of Missouri who are known and honored throughout this whole country would have stood by him, and walked with him, through the fiery furnace of this persecution, if there had been the least suspicion of moral unsoundness about his professional character. Judge Wagner is associated with us, not to argue the case but to instruct us about it. We are proud to act under his direction and guidance. He was the chief judicial officer of the State for many years: he has been equally an ornament to the bench and bar:—would he sustain this plaintiff in error?—would he defend and endorse him if there was any just reason for a doubt about his character? No, he would see him at the bottomless pit before he would speak a word in favor of a corrupt or unfaithful attorney.

But all this, I think, is beside the present purpose.

Not now, not here; at another time and in another place it may be very proper to explode the truth upon this organized band of persecutors. Then they will hear some things to be remembered as long as they live. Hunting the tiger is all very well, but when the tiger begins to hunt *them* they will find the sport not so pleasant.

Let me go on with my skeleton statement to show the technical condition of the case. This gentleman was practicing his profession honorably, uprightly, ably and successfully, surrounded by all those things that should accompany a high career—"honor, love, obedience, troops of friends"—when a complaint was made against him in the circuit court of St. Louis for "malpractice, deceit and misdemeanor." He pleaded not guilty, and demanded a trial by jury. The jury came, and the trial proceeded. It lasted a month, and ended with a verdict of guilty. I need not say that my client alleges the ruling of the court which drove the jury into this verdict, to be all wrong. He was treated throughout as one who had no rights which a white man was bound to respect. He asked for an appeal to correct those errors. I call them errors because that is the technical word, and the only word I have a right to use when I am speaking in one court about the conduct of another. I can imagine myself in a place where I might feel justified in using a very different and much stronger term.

The appeal was given, but it took him only into the court of appeals for the city of St. Louis—another local court, elected by the same constituent body. There he encountered the same evil influences, and the same bad passions, which had caused his conviction in the circuit court. The judges of the court of appeals affirmed the judgment of the circuit court with great pleasure, and refused him an appeal to the supreme court with rapture.

Other persons living and prosecuted in other counties of the State for precisely the same offense might appeal to the Supreme Court to get an illegal judgment reversed, and he

thought himself entitled to the equal protection of the law. So therefore he went up to Jefferson City and asked the Supreme Court for a *mandamus* commanding the lower court to allow an appeal and send up its record for revision. The judges of the State court of last resort held that an appeal would not lie, and therefore refused the writ of *mandamus*.

Now think for a moment of the circumstances under which this demand was made and refused. By the statute law of the State, in full force for many years, an attorney might be tried in a civil court, not for contempt of that court, but for misbehavior in another court, or for wrongful acts done in his private office, unconnected with the business of any court. If convicted he might be punished, not merely by being stricken from the rolls of that court, but by total expulsion from the profession, and disabled to practice in any court. Observe; the proceeding is not instituted for the preservation of discipline in that particular court, but to punish a general crime against the public justice of the country, and this crime may be prosecuted in a court without criminal jurisdiction, without indictment, without a grand jury, without the intervention of any public accuser, but at the instance of private enemies and rivals of the party. A more anomalous law has never been enacted; a more dangerous instrument of personal malice has never been furnished by the legislation of any country.

I think this law is fundamentally vicious and void all through, because it inflicts the most frightful penalty for the most infamous offense, without the kind of accusation or trial which the Government of a free country owes to every citizen. But while it stripped the accused party of some rights which the meanest offender possesses, it left him one great right which made him at least measureably safe: it gave him the right of appeal to the highest tribunal of the State. It gave original jurisdiction to the local courts, but declared that their judgments might be revised, and, if wrong, reversed by the Supreme Court. The law was a bad one at the best,

but it had the merit of being equally bad for all persons in every part of the State.

But in 1875 a change was made in the State constitution, and among other new provisions was this: that in the city of St. Louis, and three adjoining counties, the right of appeal to the Supreme Court should be taken away, while it should continue to be enjoyed by the inhabitants of all other counties and cities.

The present plaintiff in error suggested that this discrimination was inconsistent with the XIVth article of the Federal Constitution, which secures to all citizens alike the equal protection of the law. He had the profoundest respect for the judges of the State supreme court, and fully believed that if they would take cognizance of his case they would do him justice. But they were awed by the words of their State constitution. They could not entertain an appeal without declaring that the State constitution, which forbade them to do so, was void. This was rather embarrassing. They could hardly be expected to decide against the validity of the constitution under which they held their commissions. No State court, I believe, has ever done this. They could only declare their inability to see the conflict between the two constitutions. They acted as Nelson did at the battle of Copenhagen, when he was signalled to take his ship out of action, he put his glass to his blind eye and said he saw no signal of the kind. But these judges did the next best thing; they refused him his right under the Federal Constitution, and put the record in a shape which enabled him to bring his case here and have it decided by the highest authority.

The Supreme Court of the State will be perfectly willing to hear this appeal if you say they are bound to do so, and the plaintiff in error will acquiesce in any decision which it makes whether it be for him or against him.

The principal question, the question which lies at the bottom of the case is this: Can an appeal to the Supreme

Court of a State ever be claimed as a *right?* Or is it a mere favor which may be refused without injury?

We think it not only a right, but a right of inestimable value. If it be conceded to one man and refused to another it is mere folly to say that they both enjoy the equal protection of the law.

You and I and all of us know, very well, that the administration of justice in the local courts is always liable to be seriously disturbed by ignorance, prejudice, personal hostility of the judges, and other like causes. These evils are greatly aggravated by the system of electing judges now adopted in all the States.

My own experience enables me to count up hundreds of cases, in which the grossest injustice would have been done if the decision of the local courts, had stood unreversed; and there are cases ten times as numerous where right was done according to law, only because the judges were conscious of a control by superior authority. The value of the right to appeal is incident more to its existence than its exercise. Would you be willing to live in a city or county or other sub-division of a State, in which no writ of error could be taken to correct the wrong which might be done by a local court? Having that right, would you be willing to part with it at any price? You might feel secure in the local courts if you knew the judges to be friendly, or without their friendship, if you were sure of their honesty, virtue and learning; but under any circumstances you would feel your sense of security greatly increased by the knowledge that if wrong was done, you had a remedy in some superior court.

The judges of the Supreme Court may do wrong themselves, for they are fallible like the rest of mankind, but the security given by their jurisdiction arises out of the fact that their relations to the case and the parties and to the law which they administer, are totally different from those of the inferior courts; for they must act upon rules which apply

to the whole people and which all parties can stand by. They represent that public wisdom which is universally recognized.

For these reasons, and others equally good and sufficient, every civilized community has provided itself with one supreme tribunal charged with the duty of keeping the rest in order. It is so in France, in Prussia and in all the German States. If it is not so in Russia and Turkey, it is because in these countries they have no system for the administration of justice. There the law has no *head* because it has no *body* and no *life*. In England, ever since the time of the Saxon Heptarchy, there was a King's Bench whose writs of error ran into every county. In Scotland, as soon as soon they got rid of the jurisdiction exercised by the chiefs of the clans, they civilized the kingdom by subjecting all the local courts to the revision of one central tribunal. Before the Revolution the decrees of our colonial courts could be examined and reversed by the Privy Council, to which they were required to send up their records upon appeals properly taken. Every State in the Union is provided with a supreme court, and so is every organized Territory. Georgia tried for awhile to do without; and got along badly enough. The consequence was so much uncertainty and wrong, that she was driven by stress of sheer necessity to do what all other States had done, and make her law uniform by means of one controlling court.

What sort of government would this Federal government have been without the one supreme court required by the Constitution to correct the errors of inferior Federal courts and reverse the false decisions of State courts on questions of Federal law? Would not every provision be differently construed at different places? What chance would men have of getting their legal rights uniformly and justly administered? It is not too much to say that without this sheet anchor of our judicial system all the purposes of the government as expressed in the preamble of the Con-

stitution would be defeated. We would have neither union, justice, tranquillity, common defense, general welfare or liberty for ourselves or posterity. The right of appeal is the right preservative of all rights; public safety and private security are alike involved in it—life, liberty, property all depend upon it.

I do most devoutly believe in the right of trial by jury. I think it entitled to all the veneration and respect which is felt for it. It has cost great expense of blood and treasure to get it. Rather than give it up I would pay over again the whole original price. The enactment of the *habeas corpus* law was a strongly marked era in the history of the great race from which we sprang; and without it no people can be altogether free. But sacred as these privileges are and ought to be, I would surrender them both, rather than lose my right of appeal from false and oppressive judgments of the local courts. Perish the writ of *Habeas Corpus*, perish the Trial by Jury, but save me the great privilege of Appeal. Armed with this, I can defy the malice of my enemies in the lower courts. Political prejudice, religious bigotry, personal spite may do their worst if I can have my rights measured at last by "the golden metwand of the law."

I do not deny that an American State may, if a majority so please, abolish the right of *Appeal*, *Trial by Jury*, and *Habeas Corpus*. A State may make its government as tyrannical as it pleases, provided it does not go to the extent of being unrepublican; and even then I do not see how you can reform it. But since the XIVth amendment these fundamental rights must be given to all of the people alike; all are entitled, by the Federal Constitution, as well as natural justice, to "*the* EQUAL *protection of* the law." The State cannot make free institutions for one class while another is held down by oppression. The trial by jury must be given to all or none. The writ of *habeas corpus* cannot be confined to one class or one place while others are ex-

cluded from the privilege. The people of a hundred and nine counties in Missouri cannot make a supreme court for their own use, and refuse to share the blessing of an appeal to it with the people of the other four; why? because that is manifestly *not* giving to all citizens the equal protection of the law.

It is said that the object of the XIVth Amendment was to make the negro equal to the white man. As a historical fact I suppose that is true. But to effect their object the framers of the amendment were obliged to use words so general that all men are made equal. It is preposterous to say that a provision for the perfect equality of all men can be used only for the benefit of a class—the distinction between classes being the very thing prohibited. I think I can prove that no distinction can be made under this amendment between different classes of white men as easily as I can demonstrate a geometrical problem. Suppose you have two white men and one negro, whose civil right it becomes your duty to measure. You know very well that the negro is exactly equal to either one of the whites, and they are both equal to him. You can, therefore, make no difference between the negro and the white men, and therefore you cannot distinguish between the white men themselves, because things that are equal to the same are equal to one another. Is not that as certain as mathematics?

If a State constitution would provide for a supreme court, to which none but white men should appeal, compelling all negroes to suffer whatever wrong might be inflicted by the local courts, no man would insult you by asserting in your presence that the negro and the white man were equally protected. If the negroes got possession of a State government and would exclude all white men from the right of appeal, would not that be just as bad? The color line is not a worse division than another line which might be run across it at right angles; that is to say, a division of the people into two classes without regard to race. Suppose, for example,

that the right of appeal be given only to persons of a certain religion or certain political principle, would you stand that? Certainly not; and your answer in the negative would not depend in any degree upon the color of the persons affected. Many absurd distinctions might be imagined. But the most senseless, and unreasoning that ever was invented is a distinction based on local habitation. People who live in the mountain ranges of the State shall have an appeal; but those who cultivate the alluvial lands of the valleys shall have none. Writs of error shall run into the wheat-producing counties, but in the cotton-growing regions all men shall be at the mercy of the local magistrate. In the rural districts the courts of original jurisdiction shall administer justice according to the law of the State as expounded by the supreme court; but in large cities, where law is needed much more, vice and wickedness may riot unchecked.

If you can exscind four counties from the rest of the State and put them out of the pale, you can make smaller subdivisions for the same purpose; you can disfranchise the people of a township, for instance. Suppose your State constitution declared that a ward in St. Louis shall elect its own magistrates, to be called judges, justices, aldermen, lynch courts, regulators, or vigilance committees—what you will—but they shall have unlimited jurisdiction and decide all causes without appeal or writ of error—what sort of a ward would it be? Another Alsatia, filled with dangerous criminals, among whom no honest man could show his face with safety. And why would honest men be unsafe in such a place? Because there the inhabitants have not the equal protection of the law. Wanting the right of appeal from the local courts, they are destitute of everything that can be called a legal right, or, what is the same thing, without adequate remedy for any wrong.

Mr. JUSTICE STRONG. I wish to ask, Mr. Black, if a writ of error or appeal can ever, in any case, take up a judgment from the St. Louis court of appeals to the supreme court of

the State; or are the decrees of the St. Louis court of appeals always final by their present constitution?

Mr. BLACK. No, not always. In some cases, or classes of cases, the St. Louis court of appeals is merely intermediate.

SENATOR EDMUNDS. The St. Louis court of appeals is, by its structure and jurisdiction, an *inferior* court.

[The Senator handed to Mr. Black the constitution of the State, from which Mr. Black read the section which created the St. Louis court of appeals, and defined its powers.]

Mr. JUSTICE STRONG. I asked for information, not knowing the state of the facts. Something might depend upon the question I put. If the constitution established two separate and independent supreme courts for different parts of the State, dividing the territory, for instance, by the Missouri river, perhaps it could not be said that the people north of the river were not as well protected as those on the south.

Mr. BLACK. Perhaps not. The protection of both would be equally bad. Of two appellate courts, equal in authority, and both exercising final jurisdiction within their respective territorial limits, it could not be said that either was supreme. They would be local courts, with unlimited power, like those which Georgia suffered under, and only a little better by being two instead of five. But this is mere speculation. In fact and in truth, this St. Louis Court of Appeals is local, and inferior in its origin, object and purpose; in its nature and character; in the mode of appointing its judges; in the source of their compensation, for they are paid as well as elected by the exscinded counties, and and not by the State; it is local by its very name. It is not made, and cannot be expected to administer the law of land—the *lex terræ*—which prevails elsewhere in the State. That it hears causes by way of appeal, does not make it less dangerous to the rights of citizens than it would be if it had only original jurisdiction. Two local courts are not a

whit better than one. If I want the laws of the State applied to my case, it is mere mockery to tell me that one judge of a city court is more likely to give it to me than another, both being under the same influences and responsible to the same constituent body.

If your Honors will say that my client in this case shall have an appeal to the supreme court of the State, and thus get the equal protection of the law as there expounded, you will interpret the fourteenth amendment benificently, according to its letter and spirit. And the judgment in this case will be consonant to all your past decisions on this subject, as those decisions are now universally understood.

Certainly, may it please your Honors, all that is possible to be said in support of this condition of things in Missouri has been said by the learned counsel on the other side, and your Honors will not fall into any error from want of having had every suggestion made in support of the state of things that exists there.

It is, of course, clear that the State of Missouri may make any regulations it likes about the admission of attorneys to the bar, and also expelling them. It may say that it shall be a mere matter of discretion with any court not reviewable by any other. But our point is that, what it says to one it must say to all; and we stand with confidence upon the doctrines announced by this court yesterday and the day before, both in the majority and the minority opinions of the court, upon questions that have arisen under other aspects, with reference to the fourteenth amendment.

Now, the law of Missouri relative to this matter, is stated in our briefs; but it will also be found in Wagner's Statutes, page 188. The 17th section, when speaking of the trial of charges, treats it as being a regular statutory proceeding of trial and adjudication, like any other matter of disputed right, just as it might have applied to a license to sell liquor or to a license to a peddler of merchandise, and ten thousand things, which my friends call police regulations—grant that; but the question is whether, if you have a police regulation or a counselor regulation, it shall be one which affects all the citizens of the State alike, and gives them like redress and like remedies in a case of dispute, or whether it shall be something else; that is the point.

Now, it was said, and truly, that an attorney might be tried and disbarred in any county in which an offense was

committed, and that is the language of the 7th section; "such charge may be excepted to in the Supreme Court, or circuit court of the county in which the offense shall have been committed, or the accused resides."

The 17th section says: "In all cases of a trial of charges in the circuit court, the defendant may except to any decision of the court and may prosecute an appeal or writ of error in all respects as in actions of law." So that the statutes of Missouri put the right of attorneys, having been licensed to practice their profession in that State, under one general system of law, and say that they shall only be deprived of that right, which is the right to follow an occupation, which may be granted or not like that of a peddler or liquor seller, or anybody else, I agree; but if granted, the law of Missouri says he shall not be deprived of that right except in certain ways which constitute a regular legal proceeding, the subject of error, and all that sort of thing.

Now it is said by the learned counsel, "Why, this limitation of the Constitution bearing upon a case happening to be in that county belongs to everybody alike, from the circumstance that if an attorney in any part of the State had committed an offense in this county of St. Louis he could not have appealed to the supreme court of the State." But that does not measure it, by any means. It is true that he could not appeal; but that is exactly what we complain of. The test of the equality of protection of the laws does not depend at all upon residence, although in this case it happened to be so. It depends upon the equality of treating all citizens alike in all parts of the State in respect of their offenses against the general law; and, therefore, if this notion were true that because some other attorney in another county had committed an offense in St. Louis he could not appeal, then the laws of Missouri might have provided that in every other county of the State, and in every other circuit court except that of St. Louis, there should be trial by jury in all ordinary cases between man and man,

but in the county of St. Louis there should not be a trial by jury; that the circuit court for St. Louis county, and so of the St. Louis court of appeals, should have exclusive jurisdiction over every contract where the parties reside there, or the defendant was found there, or the contract was made there, and no review by the supreme court in such cases; which makes it analogous to this provision.

Now, would it do to hold for a single instant that, because a contract was made in the county of St. Louis by a citizen of some other part of the State it is to be tried in one way, when, if it had been made somewhere else, it would be governed and tried under a different law and limitation as respects the ultimate right of appeal. I am not on the question of computation of local power or the finality of municipal laws, and nobody disputes the right of a municipal court to finally administer them; indeed, I will grant, for the sake of argument, that an offense against the laws of a municipal corporation—a by-law or a regulation—may be punished finally by the municipal court of that place, because it is the law of that place *only* that has been broken, and so any one who *can* appeal is treated equally. But here is a case where an attorney commits an offense against the law of the *State*, and that is equally an offense everywhere in it, and which is the subject of a regular judicial proceeding, which the statutes describe, and which may be tried in *any* county where the defendant resides or is found or commits the offense; and yet if he is found, &c., in one particular county and tried, there he shall not appeal. This is not equality, unless equality is consistent with discriminations dependent upon personal circumstances or qualities; which we deny. Could Missouri say that one accused of an offense in St. Louis should not have a jury, while in all other counties juries are allowed in the same sort of cases; or that he shall not have an appeal, though in every other county in the State there is the right of appeal in the same cases? That presents the question whether such discrimination is

equal protection of the law; or is that due process of law which has been always held to be "the law of the land," which has always been held to be a law which, under like circumstances of *conduct*, leaves everybody exactly in the same situation, not only as it respects rights, but as it respects what is essential to rights—the redress and defense that he should have. Therefore, the fact that the statute of Missouri happens to state (which may be repealed to-morrow) that if the offense is committed in a particular city or county it may be tried there, does not help it at all. Suppose the statute of Missouri declared that the offense of murder, if tried in the 109 counties in the State courts should be tried by a jury, and that after a verdict and judgment, there should be a right to writ of error or appeal to the supreme court of the State; but that in the county of St. Louis, and three other counties, anybody who was tried for murder committed in those counties should not have a trial by jury and should not have an appeal to the supreme court. Is there anybody living on the face of this earth who would say that would be the equal protection of the law? It is impossible for me, if it please your Honors, so far as I am able to comprehend it, to make such a point stronger by argumentation. The mere statement is the best argument I can make.

It is a trial that affects the honor, the character, the right to pursue under the law, like other attorneys, an honorable profession, of which this gentleman is to be deprived by the judgment of an inferior court, that in all the rest of the State his brother attorneys who may be tried in any other inferior court of the State could have had reviewed by the supreme court of the State, free from local prejudice, free from being the mere creatures of a corrupt mob of a city. That is where it becomes substantial and of some consequence.

I am not going to spend a single moment of time on the question of whether this case is rightly here for re-

view, or whether what is called the Federal question (I should call it the national question) was sufficiently presented to the court below, so that the court understood that it was rejecting the right of appeal on the ground that it was claimed, in spite of the limitation of the State of Missouri, under the Constitution of the United States. I am coming directly to the main point.

My learned brother on the other side (Mr. Hitchcock) says that the St. Louis court of appeals is to be likened to a supreme court, and that it is perfectly right for a State to establish two supreme courts for the disposal of its business, each of which shall have concurrent jurisdiction. Suppose I grant that for the sake of argument, although it is not quite so clear under the Constitution of the United States as some people might wish it to be—suppose I grant it, then the question is whether this St. Louis court of appeals is in any case like that. Let us see what sort of a constitution the State has.

The constitution of Missouri provides thus—you will find it copied literally on the 5th page of Judge Wagner's very complete brief:

"The judicial power of the State as to matters of law and equity, except as in this constitution otherwise provided, shall be vested in a supreme court, the St. Louis courts of appeals, circuit courts, criminal courts, probate courts, county courts, and the municipal corporation courts.

"The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State"—by which I understand, not what my learned brother stated, a mere territorial coextension, but that which shall operate upon every part of the body politic. That is what is meant by the co-extension of the State, "under the restrictions and limitations in this constitution provided."

Then the third section says:

"The supreme court shall have a general superintending

control over all inferior courts. It shall have power to issue writs of *habeas corpus*, *mandamus*," (which was in this case applied for,) "*quo warranto*, *certiorari*, and other remedial writs, and to hear and determine the same."

"SEC. 4. The judges of the supreme court shall hold office for the term of ten years. The judge oldest in commission shall be the chief justice of the court." * * *

"SEC. 5. The supreme court shall consist of five judges, any three of whom shall constitute a quorum; and said judges shall be conservators of the peace throughout the State, and shall be elected by the duly qualified voters thereof."

That is to say, it is constituted for the whole State, with superintending jurisdiction, by virtue of the third section, distinguished from this limitation in section No. 2; of superintending jurisdiction over every inferior court; and that these judges shall be created by the united voice of all the people, and not by the local voice of any great city—as in the State of New York—the city of New York; or as in the State of Missouri—the city of St. Louis.

Now, let us see what kind of a court we have in what is called the St. Louis court of appeals. Of course "court of appeals" is a very high sounding title; but we must look at the substance, and not at the name of the thing.

"Section 12. And there is hereby established in the city of St. Louis an appellate court, to be known as the St. Louis court of appeals, the jurisdiction of which shall be coextensive with the city of St. Louis and the counties of St. Louis, St. Charles, Lincoln, and Warren. Said court shall have power to issue writs of *habeas corpus*, *quo warranto*, *mandamus*, *certiorari*, and other original remedial writs, and to hear and determine the same, and shall have a superintending control over all inferior courts of record in said counties."

If this had been intended to be a provision for a double supreme court, then, I take it that the limitation of its functions would not have been confined to the three counties named.

"Appeals shall lie from the decision of the St. Louis court of appeals to the supreme court."

Which would rather seem to imply that they were not coordinate and equal bodies, I take it, for you rarely allow an appeal from one equal power to another. Of course it would be a contradiction of terms, which is not to be thought of for a moment.

"And writs of error may issue from the Supreme Court to said court in the following cases only: In all cases where the amount in dispute, exclusive of costs, exceeds the sum of $2,500," and so on, giving the other classes of cases upon which writs may issue; which provision, so far as this case is concerned, might be stricken out, for this case stands exactly as it would if no appeal at all were allowed, for the reason that it does not come within these provisions, and the validity would have been exactly the same if no appeals at all had been allowed.

"Section 13. The St. Louis court of appeals shall consist of three judges, to be elected by the qualified voters of the city of St. Louis and the counties of St Louis, St. Charles, Lincoln and Warren, who shall hold their offices for the period of twelve years. They shall be residents of the district composed of said counties."

Then it provides as to the qualifications of age, and then,

"Provided that each of said counties shall pay its proportional part of the same,"

That is the exception.

"according to its taxable property."

Now, you have in terms, as well as in function, a mere local court, to administer justice in four counties of the State only, the expenses of which are to be paid by taxation of those counties only, the selection of the judges of which is to depend upon the will only of the mob of St. Louis;

and in using this expression I do not mean that there is a mob there; I mean there might be. I only speak of it to emphasize the point. I am not speaking of St. Louis generally, or as if it is more addicted to mobs than other places. You have got a local court, the judges of which depend for their official existence upon the voices of whatever kind of people may be there—in a great city; and their salaries are to be paid according to the taxation of the people who select them, and nobody else; and their functions are to be final as respects the people who happen to live in those three counties, or those who may be found there, or commit offenses there; whereas, the Constitution of Missouri has created a court, that it need not have created—granting it for purposes of argument—but it did create it, springing from the united voices of the whole body politic, which is the State—dependent for the selection of its members upon the united voices of the whole body politic, which is the State—its stipend to be paid by the burdens borne by every citizen of the State, and its functions co-extensive with the territory of the State, and operating on every inferior court, except, that it shall not exert its functions, as a limitation upon the jurisdiction granted, and shall not exert its functions as it respects the people of a particular and a small section of this State at all, or only in limited cases, (but that does not make any difference in this case because this action falls outside of the limitation,) or upon offenses or acts committed in that county.

Now the question is, whether that is equal protection of the law. The Constitution of the United States provides that a State shall not deny to any person within its jurisdiction the equal protection of the laws. Does not that mean the equal protection that attaches to the whole body of the political community known as a State? I need not spend any time to argue that. It is only necessary to state that proposition, for if it means anything at all—and we have found out that it means a great deal—it means that where

by local circumstances of territorial subdivisions, by residence, by the place where the act is done it happens that a man has offended against the general law of a State, that he is not to be denied the right of appealing to the general tribunal of the State, like everybody else, in the general defence of his rights.

And it goes far wider and deeper if we are to uphold a limitation of this kind, as it appears to me, than it is possible for any man to imagine; for it reaches into every direction. If you may say it as to residence or place of offense, may you not equally well say it so far as the law or right goes, as to religion? May you not say it as to race? May you not say it as to sex? May you not say it as to learning or riches? And are you not, therefore, turning over the very fundamental securities of every well-ordered State to the temporary voice of the people of that State, to say the State shall be given up to the tyranny of sections, and that here there shall be no trial by jury; or there there shall be no access to courts for persons of the Roman Catholic religion, where prejudice and fanaticism exists.

In South Carolina may they not say that in some counties where the black race is quite the controlling power and almost the entire population, that in those counties there shall be a local court or a local administration of an executive character, in which no white man shall have any other security than that which the local court gives him? Because race only illustrates this. If the Constitution forbids race distinction, it forbids every other distinction. The law which says there shall be no appeal in cases above $500, or any suit at all in courts of the United States in cases less than $500, is an equal law undoubtedly, because there it depends upon the intrinsic nature of the question, and not upon the accident of place, or race, or creed, or territory.

The CHIEF JUSTICE. Then your argument goes to this extent: That it is not within the power of the State to organize an intermediate court of appeals in any part of the

State to decide cases within a certain amount or involving certain questions, unless it makes the same or similarly constituted courts applicable to the entire State.

Mr. EDMUNDS. That is what I maintain exactly; and I maintain that the principle upon which that rests, if it be held in the affirmative, gives away the fundamental securities of organized society in every respect; and that is what Dr. Lieber, in his political ethics, so familiar to your Honors, sums up in these two or three simple words:

"Everything in the State must be founded on justice, and justice rests on generality and equality."

Vol. 1, page 174.

Take, if your Honors please, the Constitution of the United States, as it affects proceedings in the courts of the United States. It says there shall be one Supreme Court, with a certain original jurisdiction, which I shall pass by; that there shall be appellate jurisdiction in such cases and under such circumstances of limitation—I do not remember the exact words—as Congress may from time to time provide.

Now suppose the Congress of the United States by the act of 1789 establishing the judicial system, had said in that act, as the constitution of Missouri says in this case, that there may be appeals from the district court to the circuit court in such and such districts, as it has; that there may be appeals and writs of error from the circuit courts to the Supreme Court of the United States in such and such districts, as it has; but that, in the State of Vermont, there shall be no appeal or writ of error at all. Now, I undertake to say, with a sincere conviction, that although the Constitution itself says Congress may limit and regulate your jurisdiction, that it would be your bounden duty to disregard that attempted limitation by an act of Congress, and to say that the meaning of the Constitution is, in respect of regulation and limitation of jurisdiction, that it shall be uni-

versal and equal. That is the kind of regulation and limitation which the Constitution has authorized Congress to make.

Suppose the Constitution of the United States, as to the jury clause, prescribed that there should be a trial by jury under such regulations and limitations as Congress might provide, and Congress should provide that, in causes of equity there should not be a trial by jury; that in cases of contract involving $500 there should not be a trial by jury. That would be perfectly admissible beyond all question. But suppose Congress, under that grant of authority, should say, "There shall be a trial by jury in all these cases in every district of the United States except the judicial district embracing the city of New York." I undertake to say again, with a firm conviction that I shall be supported in it by this court, that you would disregard such a limitation, for the reason that you would hold that the Constitution does not authorize Congress to do that thing; but that when it authorizes Congress to make regulations and limitations of the judiciary system of the United States, they must make regulations that apply to the whole of the United States, of the same kind and in the same degree. To hold otherwise would be to say there is no use in having a Constitution at all. The very fundamental construction of civil society and of the Government would be entirely overthrown to hold otherwise.

But here we are not driven to any such length as that. The Constitution of the United States is supreme. It has said to the State of Missouri, as it has said to all the other States, "You as a State—this whole body politic—shall not deny to any person within your jurisdiction the equal rights of the law. Not that you may provide what you think to be *equivalent* protection, for that is a misuse of terms which assumes that equivalent is a synonym for equality. It is not. Equivalent is simply saying that something is of equal value." But the Constitution, in the

XIVth amendment, does not say that each State shall give everybody something of *equal value* under the protection of the law. It says they shall give them the equal protection itself. It is not a question of balancing and barter to give to one part of the people of a State, either by territory, or the place of committing the offense, or residence, or race, or religion, or stature, or sex, something that in the judgment of the supreme power of that State is just as good as what they have given to other people in respect of protection; but the protection itself is to have the inherent element of equality, and not of equal value, which is quite a different thing.

And, therefore, my learned friends I think have fallen into a mistake, or rather they have made, as counsel are prone to, the best possible argument, by showing that this St. Louis court of appeals is equivalent, in respect of the act that it is to do in the defence of rights to the act which the supreme court might do. But my reply is, as I have said, that the constitution does not call for equivalents—the balancing of benefits which make equivalents. It calls for the equality itself, without the addition or qualification, or any balancing whatever. We are entirely at sea when we talk about equivalents. That is a matter of measure and judgment and consideration of weighing; but when we come to identity of rights and the means of ascertaining them, then we have a rule that anybody of ordinary intelligence can see at once.

Now suppose we take another clause of the Constitution of the United States—that clause about Congress laying imposts, excises, taxes, &c. It may do it; but they are to be uniform throughout the United States. Well, uniform is one definition of equal; and it has always been regarded in cases that have arisen as meaning exactly that same thing—equality and fair play. Now, suppose the Congress of the United States says, that in the city of New York, every importer who pays a duty under protest in the regular way is

not to bring an action for it; that every importer there who pays duty under protest shall appeal or may appeal to the Secretary of the Treasury, and his judgment shall be final; in every other collection district of the United States the importer who thus pays duties under protest may sue in the district court, and may appeal to the circuit court and to this court; is there anybody who would stand up here or anywhere else and say that is uniform, although the rate of taxation is exactly the same in all cases? To say so would be to destroy the very coherence upon which liberty and justice depend, and which the Constitution intended to defend and has defended. So, that as I say, this case is much more far-reaching if you were to hold that this thing is to stand, than even in an hour anybody could state, in respect of the highest tribunal in the United States opening a door by an adverse decision here to consequences which no man can measure. We should be upon a sea without a shore; because, if this will stand, as I said, an hour would not furnish space enough to enumerate the questions fatal to justice, to liberty, to union, to fraternity, that might arise where your power to protect and prevent it would have been given away. It is not of so much consequence to my client, great as it is to him, as he thinks, as it is to these infinite public interests in the far future that are to fail from the consequences of saying that this species of suppression of rights, if they are given at all, as they are here, is to be upheld.

Now, my learned friends have said, "What can you do? Here is a jurisdiction granted only to a certain extent; it is limited; what are you to do?" Why, you are to do, if it pleases your Honors, what you have so often done in respect of statutes where you have held limitations void, and the grant of the statute good. Just as so often you held in the courts of the State where some of you were judges as in codicils of wills, provisos and conditions to deeds, limitations on authorities and powers; and wherever this proviso by limitation is found to be one which infringes

upon a fundamental right, it disappears in the eye of the law and is not written at all, and it leaves the original grant perfectly unimpaired, and it proceeds without the stop of limitation or proviso; and that is exactly so here. Just as in respect of your jurisdiction, although the language of the Constitution is so explicit as to the power of Congress in respect of limitations of your appellate power; yet if they grant you an appellate power at all, and put upon it a condition or limitation that it shall not apply to the case of A B, or C D, you say, "that is not within the province of Congress to do. If you have granted the power at all it must be complete and supreme and universal," and that they cannot distinguish under any authority in the Constitution as respects persons or places. Consequently, the limitation fails, and leaves the power existing which has been granted.

Now, I am not standing up here to maintain that it is not necessary, so far as you can take notice of it, that the State of Missouri in framing its constitution should have created a supreme court at all; but I am standing here to say that if the State of Missouri has created a supreme court, with the jurisdiction which it has given to it, that it is not in its power to say to one class of its citizens—because that is what it is—even as to offenses committed in a particular place, you shall not appeal to the general judicial protection to which the great mass of your fellows may in respect of the same actions.

Supposing they had made certain courts in the regular way in every part of the State—as they did except in these four counties—certainly nobody would stand up here to contend, I take it, that if the constitution of the State of Missouri had provided for these circuit courts, and had said that the Legislature of the State might regulate appeals from the circuit court to the Supreme Court, and the Legislature had said that there should be no appeals from a particular class of persons, according to the place where they

happen to commit the offense, should not appeal, would hold for a moment, and nobody would say that was the equal protection of the law under the constitution of Missouri. And yet that is just it. The question is not as to the validity of the organization of the St. Louis court of appeals, or the circuit courts of Missouri. That is agreed so far as I am concerned to be perfectly organized. The question is whether the State of Missouri had the power under the constitution, having created a local court in that city; and a Supreme court for the State, for the State to deny by the accident of place, either of residence or anything else, to that court an appellate jurisdiction which it granted as to all other places, and all other acts, and all other residents. We are not on the question of whether the St. Louis court of appeals is to be abolished—not at all. We are simply on the question whether the court of a State, and for the State in its entirety, can be limited in the exercise of its jurisdiction by the power of the State, to a particular class of persons who happen to reside in a particular county, or who happen to have got prosecuted—putting it in the most plausible way—in a particular county, which is the same thing.

Now, the State of Missouri, like every other State, has created three great departments in its government—the legislative, executive, and judicial. It has stated in its constitution, as is stated in every other, that these departments should be supreme in their respective spheres; and in the nature of things each must embrace in an equal degree the whole area and all the people of its territory.

The constitution of Missouri distributes these powers and establishes a supreme court, with appellate jurisdiction in all cases and over all courts, with the "limitation" that as to one inferior and special court, embracing four counties of the 113 in the State, and having no jurisdiction elsewhere in the State over none of its citizens not residing or found within these three counties, except those who may commit

an offense in those counties, it shall have appellate jurisdiction only in a certain class of cases, whereas over every other county and place in the State the right of supervision exists. This is the same as if *no* right of appeal had been granted in any case from the St. Louis court of appeals, and those citizens who must sue in that court, or be sued in it, from the fact that they have committed an act complained of within a small territorial limit, or reside there, or are found there, are entirely denied an appeal.

The question then is, whether a general jurisdiction having been established, it can be lawfully limited so as to shut out from enjoying it the people of a small territorial division of the State while all the other citizens enjoy it. The fact that this is an appellate jurisdiction, does not change or affect the question. It is a question of the rights of the citizen of one county in his character as a citizen of the State, to have the same benefit as his fellows elsewhere, of the judgment of the highest tribunal that they enjoy, and that is *common* to them and excepts him. I need not contend that it was necessary, as I have said, to establish a supreme court, or to grant any rights of appeal to it. I do not contend that it is not perfectly established in respect of any matter of law to limit that right of appeal to $100,000 even; to limit it to criminal cases, or to exclude all criminal cases from it. I do not deny the complete power of the State, and its control over every *subject* which is to be the matter for the decision of the court. But I say, as to the right of the citizen, that it can make no distinction by any contrivance or artifice that puts him in a different category, as respects this general court, from that of any other citizen. That is the point—and that is the point that the constitution speaks to.

The appellate jurisdiction is given in all cases in order that the citizens may have the protection of the laws, and have it under rules and decisions that have the highest sanction

of truth and wisdom, in that they will affect and bear alike on all the people who have created the court and kept it free from local prejudices and local excitements, local elections and selections of the judges.

The question, then, is the same as if original jurisdiction had been granted to the supreme court in this State in all cases, with the limitation that in respect of the people of one county—I say one merely to make the illustration clearly and shorter—no right to sue should exist.

Suppose there had been only one court created in the State of Missouri entire, and the Constitution had said that court is created for the whole State, but, as it respects the people who reside in St. Louis county, they shall not appeal to it at all, and stop there. Is that the equal protection of the laws to the people of St. Louis county? I only need ask such a question, and it illustrates, as appears to me, the whole of this thing. It is the same question if it had been provided that the court of appeals should have appellate jurisdiction over the circuit courts of two of these four counties under this provision of the constitution, and leave the circuit court the final jurisdiction as to the third; or if the circuit court of a county were to have a limit set to its jurisdiction as to one town in the county—pinning it right down to that—and then you come right down to one man and say that is the limitation; and that is what my learned friends call the equal protection of the laws.

It may be perfectly true, as they say—and in some courts in some States it would be true—that an absolute destruction of the right to resort to a court at all was equivalent to resorting to it, because in that particular case the court was entirely corrupt and would decide against him every time, and therefore he is not hurt, and to fail is exactly the same; and he has got just as much justice by staying out of court as he would by going in. But it is no equivalent, it is equality that we are after.

It is a far different question from the local distribution of

courts of justice in the several counties with equal powers. In such cases each citizen of each county has precisely the same kind of a court with identical powers as all the others, which is particularly true in respect of these 109 other counties. The circuit courts embracing these counties, one by one or two or three, have been created with precisely identical jurisdiction—with precisely the same right over all causes in those courts, no matter where the offense or the act occurs; no matter what the color, or race, or residence, or religion of the man may be, or what his calling—whether a peddler or counsellor-at-law—on precisely equal terms. No citizen in such a case has any right or privilege that is denied to any other; and the same is true of special municipal courts with jurisdiction over municipal subjects.

But as to this particular court and the particular persons who are capable of being brought within its jurisdiction—that is, those who do something in the county or live there, or are found there—this universality of the right of appeal to the judicial power of the supreme court is denied.

But here is a common general court, whose judges are chosen for a different term by the direct act of all the sovereign power of the State, acting in its entirety, and whose judgments, for that reason, are free from local bias and local corruption, and which guide and control the conduct of all the other courts locally chosen, except this single one. So that there is not, in many essential respects, even similarity in the establishment of that jurisprudence; much less equivalents; still less equality.

Assuming that the right of appeal to the highest and common court of the State is a valuable right which may be granted or withheld, but which is granted in this case to all people except those of four counties—the granting of such right to $\frac{109}{113}$ of all the citizens, denying it to $\frac{4}{113}$—is not equality of protection of the laws, when the discrimination is grounded, not on the nature or the object of the suit, but on some quality or accident attaching to the person

of the citizen, as residence or place where the event occurred, religion, race, stature, or sex. Because it may reach to everything, if it can occur at all. Calling might be put in. It might be said that everybody who follows the calling of a merchant in the particular three counties shall only have redress in the local courts, or not at all; whereas all merchants in other counties shall have it alike.

Take the case of the Constitution of the United States, which is a perfectly analogous one, as it appears to me, of the privileges and immunities of citizenship. Now, your Honors have held, in Ward *vs.* The State of Maryland, that a law of the State of Maryland which said that the commodities to be sold in that State by those who were not permanent residents, should only be sold upon a license, for which the person should pay $300, although it was by the same law provided that such commodities which were to be sold by the permanent resident, should be taxed according to the amount of their business, their amount of stock on hand, at a certain time was invalid. Your Honors had no difficulty in saying, upon precisely the principle upon which we stand, that the Constitution says that the privileges and immunities of the citizens who are not citizens of Maryland shall be the same as her citizens; that you shall have the same privileges and immunities. Here is the discrimination. It is argued, to be sure, that this is a discrimination that does not concern anybody, and all that the man has got to do to come within the favorable provision is to become a resident of the State. It is entirely at his pleasure to come within the most favorable part of this law, and all he has got to do is to come here and live. So that your Honors held, without the slightest difference, that the matter of residence, which, to be sure, the party could regulate himself, had nothing to do with it. He was not obliged to come there and live, and that he must have equal rights. You say he did not get them. Why did he not get them? Because the State, in its supreme authority, had chosen to

apply one rule which measured the exercise of his rights and remedies to him, and another rule to another.

Now that is exactly this case. The provision of the Constitution merely makes the citizen of the State of New Jersey, as it was, in this instance, entitled to an equal protection of the laws of Maryland. You said that it did not help the case under the laws of Maryland at all, from the fact that the man might get equal protection by moving into that State. The provision of the Constitution of the United States is, that every person in Missouri shall be entitled to the protection of its laws equally with the whole mass of the community.

It is not enough to say that all he has got to do is to commit this offense in some county, and, after he has committed it, he can move into some other county, and he has secured the equality of protection of the laws there.

The great importance of the principle involved in this case must be my excuse for occupying the whole of my hour, which has now expired.

NOTE IN REPLY TO POINTS OF DEFENDANT IN ERROR, BY DAVID WAGNER.

The position taken in defendant's brief (p. 9) that the application for a mandamus was not a suit, and that unless a suit was pending no appeal would lie, is fallacious. The section quoted and relied on (2 Wagn. St., p. 1006, § 1,) relates entirely to the bringing of new suits in the first instance in the circuit court. But that can have no application to the case here. In this case a suit or proceeding was regularly instituted in the circuit court, judgment was had thereon in the circuit court, and an appeal was taken to the St. Louis court of appeals, from the judgment of this last court an appeal was sought to the supreme court of the State.

As the St. Louis court of appeals refused to grant the appeal, no other alternative was left but to apply for a writ to compel the inferior court to perform its duty, and grant the appeal.

The writ was simply a remedial agent to complete and carry on to its proper conclusion a suit or proceeding already commenced.

The section quoted refers entirely to the commencement of suits in the ordinary way in circuit courts, and has no application to asking for remedial writs in the supreme court. In addition to this the record expressly shows that there was an appearance to the application on the part of the defendants, and this is one of the modes pointed out by the statute by which the court acquires jurisdiction, and is regarded as the bringing of a suit.

Much stress is laid upon the case of Sharpe *vs.* Robertson, 5 Gratt, 604, where the court of appeals in Virginia sustained the law organizing a special court of appeals.

But that case is not analogous to this, or similar in any respect. The law organizing the special court was adopted

to relieve the regular court of appeals, but it was provided that no case should be placed upon its docket where any party by himself, or his counsel should object thereto. It thus gave parties the privilege, if they saw proper, to voluntarily submit their cases to the new tribunal, but there was nothing compulsory upon them. Besides, this new special court was merely a re-organization of the general court, which was a constitutional court, and one of the judges, in the opinion, said it was impossible to distinguish these special courts, see p. 643. There is another consideration which shows the marked difference and dissimilarity between the two cases.

In the Virginia case the court organized was auxiliary and co-ordinate with the court of appeals throughout the State. It applied to all citizens who chose to voluntarily submit themselves to its jurisdiction.

The same remark is true of the courts of commission in New York and Ohio referred to. They were constitutional courts, and courts of last resort, co-ordinate and co-equal with the supreme court and court of appeals in the respective States, and exercised in all cases final appellate powers. Their powers were uniform and operated on every citizen in the State, and no odious discriminations were made in reference to them. Their organization exhibits such a clear and marked distinction to the organization of the St. Louis court of appeals, that they strenghten the case for the plaintiff in error. They show that in the schemes devised to relieve the courts of last resort, it was never before supposed that that object could be accomplished by depriving portions of the people of their rights, and denying them the equal privileges before the law guaranteed to all the balance of the community.

The counsel, at page 45, has endeavored to invoke the authority of Judge Cooley, and by garbling a passage from that learned author, gives it a seeming coloring in his favor. But it has no such meaning whatever.

What the author says in full is here transcribed:

"Laws *public in their objects* may, unless express constitutional provision forbids, be either general or local in their application; they may embrace many subjects or one, and they may extend to all citizens, or be confined to particular classes, as minors or married women, bankers or traders, and the like. The authority that legislates for the State at large must determine whether particular rules shall extend to the whole State and all its citizens, or, on the other hand, to such a division of the State or a single class of its citizens only. The *circumstance* of a particular locality, or the prevailing public sentiment in that section of the State, may require or make acceptable different police regulations from those demanded in another, or call for different taxation, and a different application of the public moneys. The Legislature may therefore prescribe or authorize different laws of police, allow the right of eminent domain to be exercised in different cases and through different agencies, and prescribe peculiar restrictions upon taxation in each distinct municipality, provided the State constitution does not forbid. These discriminations are made constantly; and the fact that the laws are of local or special operation only, is not supposed to render them obnoxious in principle.

"The Legislature may also deem it desirable to prescribe peculiar rules for the several occupations, and to establish distinctions in the rights, obligations, duties, and capacities of citizens. The business of common carriers, for instance, or of bankers, may require special statutory regulations for the general benefit, and it may be matter of public policy to give laborers of one class a specific lien for their wages, when it would be impracticable or impolitic to do the same by persons engaged in some other employments. If the laws be otherwise unobjectionable, all that can be required in these cases is, that they be general in their application to the class or locality to which they apply; and they are then public in their character, and of their propriety and policy the Legislature must judge.

"But a statute would not be constitutional which should proscribe a class or a party for opinion's sake, or which should select particular individuals from a class or locality and subject them to peculiar rules, or impose upon them

special obligations or burdens from which others in the same locality or class are exempt."

Cooley's Const. Lim., § 390.

No argument can be drawn from the above cited passage from Cooley to sustain the provision in the Missouri constitution here in controversy. The doctrine laid down is old and well established. Peculiar circumstances in certain sections may require apt legislation to meet the requirements of those circumstances; peculiar regulations may be needed in certain places that would be inapplicable elsewhere, and these the legislature may adopt, there being nothing to prohibit them.

But it must be observed in all these cases the sectional or local legislation enlarges the privileges and favors the locality directly interested, something is done for their benefit, and to meet peculiar circumstances.

But should the legislature attempt by partial or local legislation to deprive the citizens of a certain locality of substantial and important rights, which they had exercised in common with all the rest of the community, it will certainly not be contended that this could be accomplished by special legislation.

The argument that the St. Louis court of appeals is an equivalent for the Supreme Court of the State is too absurd to require serious consideration. The court of appeals is an inferior subordinate court, limited in its character to a small section of the State. In a large number of cases appeals are allowed from its decisions, regardless of the amount involved. It only pretends to be final in cases when the value of the matter brought in contest does not exceed twenty-five hundred dollars. To say that such a court limited in its jurisdiction, and entirely local in its character, is the equivalent of the Supreme Court which is directly its superior, and which is the Court of last resort for the whole State, and for every variety of cases, involving life and death, and the fortunes and rights of the whole people, is a proposition so monstrous, that every person must see its falsity at the first blush.